1681.

SUPREME COURT OF THE UNITED STATES.

No. 120.

EVELINA L. GREEN, ADM'X OF DANIEL GREEN, DEC'D, APP'T,

vs.

FLETCHER CREIGHTON, IN HIS OWN RIGHT, AND AS EXECUTOR OF JONATHAN McCALEB, DEC'D.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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DANIEL GREEN'S adm'x
vs.
CREIGHTON & MCCALEB. } No. 5.—In chancery.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, in said district, on the third Monday of January, in the year our Lord one thousand eight hundred and fifty-six; which said third Monday of January was the day to which said court was adjourned, by order of said court, made on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-five.

Be it remembered, that heretofore, to wit, on the 23d day of February, A. D. 1848, the complainant, Daniel Green, by his solicitors, Crapoo & Freeman, filed their bill of complaint herein, against the said defendants, in the words and figures following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the United States, for the southern district of the State of Mississippi, in equity sitting:

Daniel Green, who is a citizen of the State of Arkansas, residing in the county of Hot Springs, in said State, brings this, his bill, against Fletcher Creighton and Jonathan McCaleb, who are citizens of the State of Mississippi, residing in the county of Claiborne, in said State of Mississippi; and thereupon your orator complains, and says that Wheeler C. Green, late of the county of Claiborne, in the State of Mississippi, departed this life intestate and without issue, on or about the (4) fourth day of June, A. D. 1836, leaving goods, chattels, and credits to a large amount, in said county, to wit, to the amount of forty thousand dollars or *thereabout.*

The said Wheeler C. Green, at the time of his death, and for a long time previous thereto, was a citizen of the State of Mississippi; and the said Wheeler C. Green, at the time of his death, left him surviving as his sole heirs-at-law your orator and Reuben Green, who were brothers of the deceased, and Sally Smith, the wife of Asa Smith, the only sister of deceased; that the said Reuben Green, Sally Smith, and Asa Smith, are each citizens of

the State of New York, and were so at the time of the death of said Wheeler C. Green, and have constantly continued to be so up to the present time.

And your orator further states, that on the fourth Monday, the twenty-fourth day of October, A. D. 1836, or thereabouts, letters of administration on the estate of said Wheeler C. Green, deceased, were granted by the probate court of Claiborne county to one Albert Tunstall, a citizen of said State of Mississippi; further shows, that in pursuance of an order of said probate court of said county of Claiborne, the said Albert Tunstall, as administrator of all and singular the goods, chattles, and credits of the said Wheeler C. Green, deceased, and Amos Whiting, George W. Sumner, and Eli West, who were all citizens of the State of Mississippi, as the sureties of the said Albert Tunstall, made their certain writing obligatory under their respective hands and seals, bearing date the twenty-fourth day of October, A. D. 1836, whereby the said Albert Tunstall and his said sureties become held and *firm* bound unto Thomas G. McIntyre, esquire, judge of probate in and for said county of Claiborne, and his successors in office, in the sum of sixty thousand dollars; for which payment well and truly to be made, they (the said administrator and his said sureties meaning) and each of them bound themselves, their and each of their heirs, executors, and administrators, jointly and severally, firmly by said bond or writing obligatory, as reference being had to the records of said court of probate, where said letters of administration and said bond has been duly recorded according to law, will more fully and at large appear.

And your orator further showeth, that the condition of said obligation was such, that if the said Albert Tunstall, administrator of the goods, chattles, and credits of Wheeler C. Green, deceased, did make a true and perfect inventory of all and singular the goods, chattles, and credits which had or should come to the hands, possession, or knowledge of him, the said administrator, or in the hands or possession of any other person or persons for him, and the same so made did exhibit to the orphan's court of Claiborne county, when he should be thereunto required by the said court, and such goods and chattles did well and truly administer according to law, and further did make a just and true account of his actings and doings therein, when thereto required by the said court, and all the rest of said goods, chattles, and credits which should be found remaining, or account of the said administration, the same being first examined and allowed by the said court, should deliver and pay unto such persons respectively as were entitled to the same by law; and if it should thereafter appear that any last will and testament had been made by the deceased, and the same should be proved in court, and the executor or executors obtain letters testamentary, and the said Albert

Tunstall did in such case, being required, render and deliver up his letters of administration, then the obligation to be void, else to remain in full force, as reference being had to the records of said court of probates, where the condition of said obligation has been duly recorded, and where said bond and condition are on file, will more fully and at large appear.

And your orators further sheweth, that immediately after the said letters of administration were granted and bond given, as before stated, the said Tunstall entered upon the administration of said estate, and took possession of all and singular the goods, chattels, and credits which were of said Green, deceased, amounting in gross to the sum of forty thousand dollars or *thereabout*; further showeth, as a part of the estate of the said Wheeler C. Green, deceased, which came to the hands of said Tunstall, administrator, of sixteen or seventeen full grown slaves, as appears by the inventory rendered by said Tunstall of said estate; further states that said slaves were all brickmakers, engaged in the business of making bricks, at the time the same came to the possession of said Tunstall, on a brick-yard belonging to the estate of said Wheeler C. Green, deceased; further states that said Tunstall continued to employ said slaves in the business of making brick for a series of years thereafter, until said slaves had manufactured about three millions of brick of good quality, and the ordinary size and material for house building, and like purposes; said bricks were assets by increase, in the hands of said Tunstall, of said estate, and were worth from nine to ten dollars per thousand, at the yard where they were made; and your orator avers that the said Tunstall sold said bricks without authority, for a sum not less than nine dollars per thousand.

And your orator further avers, that said slaves made said bricks principally in the summer season; that in the winter, were employed by said Tunstall in cutting cord wood for sale, whereby said Tunstall made large profits, and made more than sufficient profits to defray all the expenses incurred during the time said slaves were employed in the manufacture of said bricks; and so your orator states that said Tunstall was at no expense whatever in manufacturing said bricks, and that the same were nett profits in his hands to the amount of at least nine dollars per thousand bricks; further states, that said Tunstall at other times hired said slaves at service, whereby he received a large amount of money.

And your orator further states, that the said Tunstall of the receipt of the said personal estate, and after the receipt of said bricks and the hire of said slaves, wasted and applied the same to his own use.

And your orator further sheweth, that after the said Tunstall entered upon said administration, to wit, on the fifth day of August, A. D. 1837, the said Reuben Green and the said Asa Smith and Sally Smith, by deed duly made and executed, bearing date

the fifth day of August, A. D. 1837, in consideration of nine thousand dollars to them in hand paid, the receipt whereof is therein acknowledged and confessed as granted, assigned, released, bargained, and sold, and by said deed they did for themselves, their heirs, executors, administrators and assigns, grant, assign, release, bargain, and sell, and your orators, his heirs, executors, administrators, and assigns, all their right, title, and interest of, in, and to all and singular the estate, as well real as personal, of the said Wheeler C. Green, deceased, as his heirs-at-law aforesaid; and they did by said deed authorize and empower your orators, his heirs, executors, administrators, and assigns to, for their own use and benefit, to ask, demand, and receive of and from the said Albert Tunstall, administrator as aforesaid of the estate of the said Wheeler C. Green, deceased, the part or portion of the said estate which they (the said grantors) might be entitled to as heirs-at-law of the said Wheeler C. Green, deceased; and upon the receipt thereof by your orator, he was thereby authorized and empowered to make, sign, and deliver any deed or deeds of conveyance, release, or discharge in their names, (the names of the said grantors meaning,) or otherwise that might be necessary to enable your orator to procure and enjoy their respective portions of the said estate of the said Wheeler C. Green, deceased, as aforesaid, as reference being had to said deed or to the records of the said court of probates of Claiborne county, where said deed is duly recorded, will more fully and at large appear.

And your orator further states, that by virtue of said deed, your orator became sole distributee of the estate of said Wheeler C. Green, deceased, and being such sole distributee, he afterwards instituted a plenary proceeding by bill, in said court of probates of Claiborne county, against said Albert Tunstall, as administrator as aforesaid, to compel to account for his actings and doings in the administration of the estate of the said intestate; that such proceedings were had thereon; that at the June term, A. D. 1841, of said court of probates, the said court rendered a final decree in your orator's favor against the said Tunstall, administrator as aforesaid, for the sum of sixty-one thousand one hundred and ninety-four dollars seventy-six cents or thereabouts; and it was further ordered and decreed, that the said administration bond of said Tunstall be put in suit in any court having cognizance, for the use of your orator; to which said decree now on record in said court of probates, your orator prays leave to refer for greater certainty, where the same may more fully and at large appear.

And your orator states, that said Tunstall did not well and truly administer according to law the goods, chattels, and credits of the said Wheeler C. Green, deceased, in this, to wit, that he did not make out and render a just and true account of his actings and doings in the administration of said estate, although he was often required so to do by said probate court.

And your orator further showeth, that he was and is the sole distributee of said Wheeler C. Green, deceased, and was and still is entitled by law to the distribution of the whole of said estate; further states that there are no lawful claims remaining due and unpaid against said estate, except the claim of your orator; that said Tunstall, although often requested so to do, did not deliver and pay to your orator all the rest of the goods, chattels, and credits which were found remaining on account of his administration of said estate; nor did said Tunstall, after the decree of said probate court in favor of your orator, for the said sum of sixty-one thousand one hundred and ninety-four dollars and seventy-six cents, pay to your orator the amount of said decree or any part thereof, but on the contrary, the said Tunstall unlawfully and fraudulently appropriated the amount specified in said decree to his own use, and never paid the same, although often requested so to do.

And your orator further states, that about the month of August, A. D. 1843, the said Tunstall departed this life in the county of Claiborne, in said State of Mississppi; and that said Tunstall, at the time of his death, was totally insolvent, and left the amount of said decree of said probate court, to wit, the sum of sixty-one thousand one hundred and ninety-four dollars and seventy-six cents, due and unpaid to your orator.

And your orator further showeth, that the said Amos Whiting, one of the sureties of the said Tunstall on his said administration bond, departed this life intestate, at his residence in the county of Claiborne, in said State of Mississippi, about the month of August, A. D. 1837, being at the time of his death a citizen of the State of Mississippi; that shortly after his death, on or about the 28th day of August, A. D. 1837, letters of administration were granted by the probate court of Claiborne county, of all and singular the goods, chattels, and credits which were of the said Amos Whiting, deceased, in his life time, the time of his death, to the said George Lake, Maria Louisa Whiting, the widow and relict of the said Amos Whiting, deceased.

And your orator further showeth, that about the month of March, A. D. 1839, the said Maria Louisa intermarried with Jeremiah M. Rhodes, who thereby became administrator of said estate, in virtue of his marriage; that at the October term of the probate court of Claiborne county, A. D. 1841, the said George Lake, and the Maria Louisa, and the said Jeremiah M., were removed from the *administrator* of said estate.

And your orator further showeth, that at the said October term of the court of probates of Claiborne county, A. D. 1841, letters of administration de bonis non were granted to Fletcher Creighton, of all and singular the goods, chattels, and credits of the said Amos Whiting, deceased, not already administered, and that the said Fletcher Creighton is still such administrator de bonis non.

And your orator further showeth, that since the appointment of said Fletcher Creighton as aforesaid, therein administered, goods, chattels, and credits of the said Amos Whiting, to a very large amount, have come to the hands, knowledge, and possession of him, the said Fletcher Creighton, of all of which your orator seeks a full discovery from the said Fletcher; that he, the said Fletcher Creighton, has in his hands or under his control at interests, a large amount of equitable assets of said estate of Amos Whiting, deceased, which cannot in any form be reached at law, and of which your orator seeks a full discovery; that the same are now, and have been ever since the appointment of him, the said Fletcher, at interest.

And your orator further showeth, that the most of the equitable assets, so in the hands of the said Fletcher Creighton as aforesaid, are at interest with the said Jonathan McCaleb, who has the use of the same, and who is the surety of the said Fletcher Creighton, in his administration bond, as administrator de bonis non as aforesaid, and who is therefore liable for the defalcation of the said Fletcher Creighton, so far as his said bond and the law makes him liable.

And your orator further showeth, that the said Fletcher Creighton, administrator as aforesaid, is insolvent.

And your orator further showeth, that on the 22nd day of April, A. D. 1844, in the court of probates of Claiborne county, in pursuance of an order of said court of probates, the said Fletcher Creighton, in open court, as administrator de bonis non of all and singular the goods, chattles, and credits of the said Amos Whiting, deceased, not already administered when the said Fletcher Creighton was appointed such administrator, and the said Jonathan McCaleb, as the surety of the said Fletcher Creighton, made their certain writing obligatory under their respective hands and seals, bearing date the day and year last aforesaid, whereby the said Fletcher Creighton and the said Jonathan McCaleb, his surety as aforesaid, became held and firmly bound unto William M. Randolph, judge of probates in and for said county of Claiborne, and his successors in office, in the sum of one hundred thousand dollars; for which payment well and truly to be made, they and each of them bound themselves, their and each of their heirs, executors and administrators, jointly and severally, firmly by said writing obligatory.

And your orator further showeth, that there was a condition to said writing obligatory there underwritten, which recited that the above bound Fletcher Creighton, administrator de bonis non of the goods, chattels, and credits of the estate of Amos Whiting, deceased, had theretofore executed a bond payable to Nicholas McDougall, and conditioned for the discharge of his duties as administrator de bonis non as aforesaid, which said bond bore date the twenty-eighth day of October, A. D. eighteen hundred

and forty-one; and said condition further recited, that by an order of court, (the said court of probates *meanly*,) made on the twenty-second day of April, A. D. eighteen and forty-four, other bond and security had been required of said administrator, then the condition of said writing obligatory was such, that if the said administrator should well and truly have kept and performed, and should well and truly keep and perform the condition of the bond aforesaid, (meaning thereby the condition of the bond mentioned in the above recital,) and should continue to perform the duties of his office aforesaid, then the said obligation was to be void, otherwise it should remain in full force and virtue.

And your orator further showeth, that on the twenty-eighth day of October, one thousand eight hundred and forty-one, in the court of probates of Claiborne county, in pursuance of an order of said court, the said Fletcher Creighton, as administrator of all and singular the goods, chattels, and credits inadministered of the said Amos Whiting, deceased, and James S. McCaleb, and Elias C. Henderson, as the sureties of the said Fletcher Creighton, made the writing obligatory mentioned in the above recital under their respective hands and seals, bearing date the day and year last aforesaid, whereby the said Fletcher Creighton and his said sureties became held and firmly bound unto Nicholas McDougal, esquire, judge of probate in and for said county of Claiborne, and his successors in office, in the sum of one hundred thousand dollars, for which payment well and truly to be made, they and each of them bound themselves, their and each of their heirs, executors and administrators, jointly and severally, firmly by said writing obligatory.

And your orator further showeth, that there was a condition to said last mentioned writing obligatory there underwritten, which condition was such, that *of* the said Fletcher Creighton, administrator de bonis non of the goods, chattels, and credits of Amos Whiting, deceased, remaining unadministered, did make a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which has or should come to the hands, possession, or knowledge of him, the said adm'r de bonis non, (meaning administrator de bonis non,) or in the hands or possession of any other person or persons for him, and the same so made, did exhibit unto the orphan's court of Claiborne county, (the said court of probates of Claiborne county meaning,) when he should be thereunto required by said court, and such goods, chattels, and credits did well and truly administer according to law, and further did make a just and true account of his actings and doings therein, when thereto required by the said court, and all the rest of said goods, chattels, and credits which should be found remaining on account of said administrator, the same having been first examined and allowed by said court, should deliver and pay unto such persons respectively as should

be entitled to the same by law; and if it should thereafter appear that any last will and testament had been made by the deceased, and the same be proved in court, and the executor and executors obtain letters testamentary, and the said Fletcher Creighton did in such case, being required, render and deliver up his letters of administration de bonis non, the said obligation was to be void, else to remain in full force, as by reference being had to the records of said court of probates when the said two last mentioned bonds and the conditions thereof have been duly recorded, and where the same are now on file, will more fully and at large appear.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporate oaths, according to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note here underwritten they are respectively required to answer, that is to say:

1st. Whether the said defendants did not make the two several bonds last *aboved* mentioned and set forth as is alledged in the bill; and if otherwise, how?

2nd. Whether the said Fletcher Creighton has not received of said estate of said Whiting a large amount of assets, as is charged in this bill, and how large an amount has he so received, and what assets has he so received?

3d. Whether most of the equitable assets in his hands is not out at interest in the hands of the said Jonathan McCaleb, and if not in his hands, whether the same is not at interest in the hands of any other person; give the name and residence?

4th. Whether the said Wheeler C. Green did not die intestate, leaving your orator and your orator's brother and sister his sole heirs-at-law, as is stated in the bill; and if otherwise, how?

5th. And whether the sale and assignment to your orator by your orator's brother and sister and brother-in-law of their portions of said estate of said Wheeler C. Green, deceased, whereby your orator became sole distributee of said estate, was not made, as is alleged in the bill; and if otherwise, how?

6th. Whether said Albert Tunstall did not administer and execute bond, as is charged in the bill; if otherwise, how?

7th. Whether the said Amos Whiting did not become the surety of said Tunstall as administrator, as is charged in the bill; or otherwise, how?

8th. Whether said Tunstall, as said administrator, did not receive the slaves and other personal property, and make the bricks, and cut the wood, and hire out the slaves, and receive the proceeds arising therefrom, as is charged in the bill, or otherwise; and if otherwise, how?

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9th. Whether your orator did not institute a plenary proceeding and obtain a final decree in said probate-court of Claiborne county against said Albert Tunstall, as is charged in the bill, or otherwise; and if otherwise, how, and what he did receive?

10th. Whether said Tunstall did not waste and convert to his own use the estate of the said Wheeler C. Green, deceased, as is alleged in the bill, or otherwise, and if otherwise, how; state every particular?

Your orator therefore prays that his said demand and claim may be established by decree of this court against the estate of the said Amos Whiting, deceased, and against the said Fletcher Creighton, in his capacity and character as administrator de bonis non of said estate of said Amos, to the amount of the liability of said Amos, for and on account of said Albert Tunstall, as administrator aforesaid.

And your orator further prays that the said Fletcher Creighton and said Jonathan McCaleb, may admit assets in the hands and possession of said Fletcher sufficient to pay and satisfy your orator's claim and demand in the premises, or that the said Fletcher Creighton may set forth in his answer a just, full, and true account of the goods, chattels, and credits, and effects of the said estate of the said Amos Whiting, deceased, which have come to the hands, knowledge, or possession of him the said Fletcher, or to the hands, knowledge, or possession of any other person or persons for him.

And your orator further prays that the said Fletcher Creighton may be decreed to pay unto your orator such sum or sums of money as may be decreed against the estate of the said Amos Whiting or against the said Fletcher, in his character and capacity of administrator as aforesaid, if sufficient assets shall be found against said Fletcher to do so, and if not, then such amount as *such* Fletcher shall be found liable for; and in case the said Fletcher shall not be able to pay such sum or sums on account of his said insolvency, then that the said Jonathan McCaleb may be decreed as his surety to pay it for him; and your orator prays for such further and other relief in the premises as shall be agreeable to equity and good conscience. Or in case your orator shall have mistaken the relief which in equity and good conscience he is entitled to, then your orator prays for any and every such further and other relief in the premises as the nature and circumstances of his case may entitle him to.

May it please your honors, the premises considered to grant unto your orator the writ of subpœna, to be directed to the said Fletcher Creighton and to the said Jonathan McCaleb, commanding them and each of them to be and appear before your honors in this honorable court on a certain day and under a certain form, and then and there to answer all and singular the premises aforesaid, and to stand to, perform, and abide such order, direction,

and decree therein as to your honors shall seem meet, &c.; and your orator will ever pray, &c.

Note.—Each of the defendants, Fletcher Creighton and Jonathan McCaleb, are hereby required to answer each of the above numbered interrogatories.

CRAPOO & FREEMAN,
Solicitors for compl.
JOSEPH CRAPER, *of counsel.*

And on the said 23d day of February, A. D. 1848, the following writ of subpœna, issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States to Fletcher Creighton and Jonathan McCaleb, greeting:

For certain causes offered before us, in our circuit court for the southern district of Mississippi sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court in and for said distrit, sitting in chancery, to be held at the town of Jackson on the 1st Monday of April, to answer to a bill of complaint exhibited against you by Daniel Green, complainant in our said court, and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in Nov'r, A. D. one thousand eight hundred and [L. S.] 47, and in the 72d year of the independence of the United States.

Issued the 23d day of Feb'y, 1848.

The def'ts in this case are required to enter their appearance to the suit, on or before the day to which this writ is returnable, otherwise the bill may be taken pro confesso.

W. H. BROWN, *Ct'k.*
Per CHAS. S. ROGERS, *D. C.*

To the marshal of the southern district of Mississippi to execute and return.

Marshal's return.

Executed the 24th March, 1848.

THOS. FLETCHER, *Mhl.*
By P. FLETCHER, *D. Ml.*

And afterwards, to wit, on the 20th day of April, A. D. 1848, the following demurrer was entered in this cause, to wit:

Demurrer.

Circuit court of the U. S., May term, 1848.

UNITED STATES OF AMERICA,
Mississippi district.

DANIEL GREEN, compt.,
vs.
FLETCHER CREIGHTON and JONATHAN McCALEB, def'ts. } 165.

The said defendants, by protestation not confessing all or any of the matters and things in complainant's bill of complaint to be true, in manner and form as the same are therein set forth and alleged, do demur in law to said bill, and for cause of demurrer say that said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery or relief touching the matters contained in said bill for or against them; wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, said defendants demur to said bill, and all the matters and things therein contained, and pray the judgment of this court whether they shall be compelled to make any other answer to said bill, and that they may be hence dismissed with their reasonable costs, &c.

GUION & BAINE,
Sol's for Def'ts.

STATE OF MISSISSIPPI,
Claiborne county.

Personally appeared before the undersigned, commissioner of the circuit court of the United States for the Mississippi district, F. Creighton, one of the above named defendants, who, being sworn, says on oath that the foregoing demurrer is not interposed for delay.

F. CREIGHTON.

Sworn to and subscribed before me, this 15th day of April, 1848.

N. McDOUGALL,
Comm. U. S. district court, southern district, Miss.

And afterwards, to wit, at the May rules, to wit, on the first Monday of May, in the year of our Lord one thousand eight hundred and forty-eight, this cause was set for hearing on the demurrer to the bill of complaint herein by defendants.

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, the following order was entered in said cause, to wit:

DANIEL GREEN
vs.
CREIGHTON & MCCALEB.

Set for hearing by defendants on demurrer. Argued and submitted.

And afterwards, to wit, on the 17th day of May, in the year of our Lord one thousand eight hundred and forty-eight, the following order was entered in said cause, to wit:

DANIEL GREEN
vs.
CREIGHTON & MCCALEB.

Motion by the complainant for the appointment of a special commissioner to take the deposition de bine esse of Allen Barr; ordered by the court that the motion be sustained, and that Nicholas McDougal, of Port Gibson, be appointed a commissioner to take said deposition, upon giving notice of the time and place of taking the same to the defendants.

And afterwards, to wit, on the 14th day of May, A. D. 1849, the following order was entered in this cause, to wit:

In chancery.

DANIEL GREEN
vs.
CREIGHTON & MCCALEB et al. } 165.

Demurrer overruled, and leave given to file answer in ninety days.

And afterwards, to wit, on the 11th day of August, A. D. 1849, the following answer was entered in said cause, together with the exhibits thereto, in the words and figures following, to wit:

The answer of Fletcher Creighton and Jonathan McCaleb, to the bill of complaint exhibited against them in the circuit court of the United States, for the southern district of Mississippi, sitting in chancery, by Daniel Green:

These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception to the many errors, misstatements, and insufficiencies in the said bill contained, for answer to so much and to such parts thereof as they are advised to be material, answering, say:

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They admit that Wheeler C. Green died in Claiborne county, in the State of Mississippi, sometime prior to the twenty-fourth of October, A. D. 1836. They know nothing of the precise time of his death, and that he left an estate which was appraised at twenty thousand two hundred and fourteen 25-100 dollars. They are ignorant of its actual value, and know nothing of their own knowledge of the amount of claims against it, but they are informed and believe that the debts of said estate amounts to a large sum, to wit, to the sum of about sixteen thousand dollars, which was paid by Albert Tunstall, his administrator, besides a heavy amount of debt outstanding and unpaid. They deny that complainant is the sole distributee of said Wheeler C. Green, and they have no knowledge of complainants having purchased the interest of the other distributees, and require proof thereof. They insist, however, that the other distributees are necessary parties to this bill, and beg leave to rely on the failure of complainants to make them parties as a ground of demurrer to the bill.

They admit that at the October term, A. D. 1836, of the probate court of Claiborne county, letters of administration upon the estate of said Wheeler C. Green, were granted to Albert Tunstall; and that on the twenty-fourth day of October, A. D. 1836, Tunstall executed an administration bond in the penalty of sixty thousand dollars, with Amos Whiting, Eli West, and George W. Summers as his sureties.

They admit that Tunstall took possession of the personal estate of Wheeler C. Green, and that there were sixteen negro slaves of said estate, of ages varying from four to sixty years, which were appraised at fourteen thousand nine hundred dollars. They know nothing about said negroes being employed in making brick, and require proof thereof; but as it is alleged that the bricks were made in the summer, and as Tunstall only had the negroes two summers, they believe and charge that complainants must have greatly exaggerated the quantity made. Should the allegations of the bill on this point, however, to establish by proof, these defendants deny that the bricks made by Tunstall, after the decease of Green, were goods or chattels, rights or credits of said Wheeler C. Green, at the time of his death, and they insist that if Tunstall made any profit or money thereby, though he may be responsible for it as trustee, yet the sureties on his administration bond cannot be held liable for it.

Further answering, these defendants say that they have no knowledge or information on the subject of Tunstall employing said negroes in the winter in cutting cord wood, or of his hiring out any of said negroes, or of his making sales of cord wood, and they insist that the allegations of the bill in relation thereto shall be supported by proof. They deny, however, that any cord wood which Tunstall may have cut and sold, was either goods, chattels, rights, or credits of Wheeler C. Green at the time of his

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, the following order was entered in said cause, to wit:

DANIEL GREEN
vs.
CREIGHTON & MCCALEB.

Set for hearing by defendants on demurrer. Argued and submitted.

And afterwards, to wit, on the 17th day of May, in the year of our Lord one thousand eight hundred and forty-eight, the following order was entered in said cause, to wit:

DANIEL GREEN
vs.
CREIGHTON & MCCALEB.

Motion by the complainant for the appointment of a special commissioner to take the deposition de bine esse of Allen Barr; ordered by the court that the motion be sustained, and that Nicholas McDongal, of Port Gibson, be appointed a commissioner to take said deposition, upon giving notice of the time and place of taking the same to the defendants.

And afterwards, to wit, on the 14th day of May, A. D. 1849, the following order was entered in this cause, to wit:

In chancery.

DANIEL GREEN
vs.
CREIGHTON & MCCALEB et al. } 165.

Demurrer overruled, and leave given to file answer in ninety days.

And afterwards, to wit, on the 11th day of August, A. D. 1849, the following answer was entered in said cause, together with the exhibits thereto, in the words and figures following, to wit:

The answer of Fletcher Creighton and Jonathan McCaleb, to the bill of complaint exhibited against them in the circuit court of the United States, for the southern district of Mississippi, sitting in chancery, by Daniel Green:

These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception to the many errors, misstatements, and insufficiencies in the said bill contained, for answer to so much and to such parts thereof as they are advised to be material, answering, say:

They admit that Wheeler C. Green died in Claiborne county, in the State of Mississippi, sometime prior to the twenty-fourth of October, A. D. 1836. They know nothing of the precise time of his death, and that he left an estate which was appraised at twenty thousand two hundred and fourteen 25-100 dollars. They are ignorant of its actual value, and know nothing of their own knowledge of the amount of claims against it, but they are informed and believe that the debts of said estate amounts to a large sum, to wit, to the sum of about sixteen thousand dollars, which was paid by Albert Tunstall, his administrator, besides a heavy amount of debt outstanding and unpaid. They deny that complainant is the sole distributee of said Wheeler C. Green, and they have no knowledge of complainants having purchased the interest of the other distributees, and require proof thereof. They insist, however, that the other distributees are necessary parties to this bill, and beg leave to rely on the failure of complainants to make them parties as a ground of demurrer to the bill.

They admit that at the October term, A. D. 1836, of the probate court of Claiborne county, letters of administration upon the estate of said Wheeler C. Green, were granted to Albert Tunstall; and that on the twenty-fourth day of October, A. D. 1836, Tunstall executed an administration bond in the penalty of sixty thousand dollars, with Amos Whiting, Eli West, and George W. Summers as his sureties.

They admit that Tunstall took possession of the personal estate of Wheeler C. Green, and that there were sixteen negro slaves of said estate, of ages varying from four to sixty years, which were appraised at fourteen thousand nine hundred dollars. They know nothing about said negroes being employed in making brick, and require proof thereof; but as it is alleged that the bricks were made in the summer, and as Tunstall only had the negroes two summers, they believe and charge that complainants must have greatly exaggerated the quantity made. Should the allegations of the bill on this point, however, to establish by proof, these defendants deny that the bricks made by Tunstall, after the decease of Green, were goods or chattels, rights or credits of said Wheeler C. Green, at the time of his death, and they insist that if Tunstall made any profit or money thereby, though he may be responsible for it as trustee, yet the sureties on his administration bond cannot be held liable for it.

Further answering, these defendants say that they have no knowledge or information on the subject of Tunstall employing said negroes in the winter in cutting cord wood, or of his hiring out any of said negroes, or of his making sales of cord wood, and they insist that the allegations of the bill in relation thereto shall be supported by proof. They deny, however, that any cord wood which Tunstall may have cut and sold, was either goods, chattels, rights, or credits of Wheeler C. Green at the time of his

death, and insist that though he might be responsible therefor as a trustee, no liability can attach against the sureties on his administration bond by reason thereof.

Further answering, these defendants deny that Tunstall wasted or applied to his own use any part of the estate of the said Wheeler C. Green, but on the contrary, they aver that to the best of their information, he faithfully applied all the proceeds of said estate that came to his hands to the payment and liquidation of the debts of the estate, and that a large amount of debt still remains unpaid.

Further answering, these defendants admit that in the month of March, A. D. 1839, complainants instituted proceedings against Tunstall, in the probate court of Claiborne county, and that at the June term, A. D. 1841, of said court, he obtained a decree for the amount stated in his bill. But they deny that at the time of the rendition of said decree the said Tunstall was indebted to the estate of said Wheeler C. Green in any amount whatever, and they aver that he had at that very time paid out in liquidating debts of said estate a larger amount than he had received or was in any way liable for. They further aver that said decree was obtained by the grossest fraud; that complainant well knew that said Tunstall had paid out large sums for debts of said estate, the knowledge of which he fraudulently concealed from said court, and allowed Tunstall no credit therefor; that complainants and his counsel well knew that the said Tunstall was during the whole of said proceedings in the probate court of insane mind, and entirely incapable of attending to business, and that he did not give the least attention to said proceedings; and they aver and charge the truth to be, that the complainant fraudulently took advantage of the situation of Tunstall, to conduct an ex parte proceeding, and thereby procure a most unjust and unfounded decree; and they aver further, that though Summers and West, two of the sureties of Tunstall in his administration bond, were made parties to said proceedings, they were both insolvent, and as complainants well knew careless of their liability, and paid no attention to it, while the administrators of Amos Whiting, who had died in August, A. D. 1837, and whose estate was most interested, was not made parties, and had no notice of the proceeding; they therefore insist that said decree was obtained by fraud, and it is to all intents and purposes void, and that at all events it is not evidence against these defendants.

These defendants further aver, that so far from Tunstall being indebted to the estate of Wheeler C. Green in the amount of said decree, John L. Torrey, who, upon the death of Tunstall in the year 1843, administered upon his estate, having been cited as the administrator of Tunstall, by the probate court of Claiborne county, to render an account of the administration by Tunstall, of the estate of Wheeler C. Green, exhibited to said court an

account made out by said Tunstall in his life time, in his, Tunstall's, own handwriting, duly supported by vouchers, which, with some few additions made thereto by said Torrey, as administrator, showed that Tunstall had received on account of said estate the sum of ten thousand five hundred and thirty 56-100 dollars, and a note of H. T. Palmer for five thousand dollars, for brick sold, which note has not yet been paid, and that he had paid out on account of debts of said estate, the sum of sixteen thousand one hundred and ninety-nine 12-100 dollars, which account the probate court refused to receive. These defendants file herewith the said account and the vouchers thereto, and the answer of said Torrey to said citation, as exhibit No. 1, and pray that the same may be taken as a part of this their answer. And these defendants believe, and charge that said account contains a true statement of the administration of Tunstall on the estate of Wheeler C. Green, and that the same was made out by Tunstall himself, in the year 1839, and while he was of sane mind.

Further answering, these defendants aver that Tunstall did well and truly administer the estate of Wheeler C. Green, and that he did deliver to complainant all the negro slaves and other personal property of said estate, except a negro man named Aaron, who was sold by Tunstall, and the sale satisfied by complainant, and the proceeds thereof fully accounted for in said accounts, filed as exhibit No. 1; and they are informed and believe, and charge it to be true, that the debts due to the estate of Wheeler C. Green, not administered by Tunstall, came after his death to the hands of complainant and Joseph Crapoo, as administrator de bonis non, and they deny upon like information that the claim of complainant is the only unsatisfied legal claim against said estate.

Further answering, they admit that Tunstall died insolvent in August or September, A. D. 1843.

They also admit, that Amos Whiting died in the month of August, A. D. 1837, and that at the August term, A. D. 1837, of the probate court of Claiborne county, letters of administration upon his estate were granted to Judge Lake and Maria L. Whiting.

They also admit that, in March, A. D. 1839, the said Maria Louisa Whiting was married to Jeremiah M. Rhodes.

They also admit, that at the October term, A. D. 1841, of the Claiborne probate court, the letters of Lake, and Rhodes and wife were revoked, because they declined giving new *new* security, and that thereupon, letters of administration de bonis non were granted to this defendant, Fletcher Creighton, who is still administrator de bonis non.

Further answering, this defendant, Creighton, says, and defendant McCaleb believes it to be true, that he, the said Creighton, has from time to time made full returns according to law to the probate court of Claiborne county, of all assets that have

come to his hands as administrator de bonis non of Amos Whiting; that the same are of record in said court, together with all his annual accounts and the vouchers to the same. These defendants cannot make the discovery and disclosure thereof brought by complainants' bill, without procuring certified copies of said record, which are as accessible to complainants as they are to these defendants; and if they are necessary as proofs to sustain complainants' bill, these defendants most respectfully submit that it would be as well for complainant to bear the expense of procuring the copies, as that it should be thrown upon them.

Further answering, these defendants know of no equitable assets in the hands of this defendant, Creighton, as administrator de bonis non of Whiting, besides the proceeds of the sale of certain land of Whiting, sold by him as administrator, under the order of the probate court, the sale and the amount whereof have been duly returned to said probate court, and are there of record open to the inspection of complainants.

Further answering, these defendants admit that on the twenty-eight day of October, A. D. 1841, defendant Creighton executed an administration bond, in the penalty of one hundred thousand dollars, with James S. McCaleb and Elias C. Hankinsin, as his sureties; and that on the twenty-second day of April, A. D. 1844, he executed in the Claiborne probate court a new administration bond in the same penalty, with this defendant, Jonathan McCaleb, as his surety.

Further answering, these defendants aver and charge the truth to be, that letters of administration upon the estate of Amos Whiting, were granted by the probate court of Claiborne county, on the twenty-eighth day of August, A. D. 1837, to Maria Louisa Whiting and George Lake, and that within two months after the grant of said letters of administration, the said Maria and George published in a newspaper printed in said county of Claiborne a notice requiring all persons having claims against the estate of their said intestate, to exhibit the same within the time limited by law, or the same would be barred; which notice stated the time of granting such letters of administration, and was published once a week for six successive weeks; and they aver, that at the time of the said letters, and for more than three years thereafter, the said complainant was a citizen and resident of the county of Claiborne and State of Mississippi. And they further aver that the said complainants demand, in a form to be recognised by law as a valid claim against the estate of the said Amos Whiting, was not exhibited to said administrator or either of them within eighteen months after the expiration of the time of the publication of said notice; and these defendants ask leave to rely on the fact, as a special cause of demurrer to said bill, that the said bill contains no averment of the presentation of said claim, within the time limited by law for that purpose; and if not allowed to do so,

then they pray that they may be permitted to insist on the above denial of the presentation thereof as a plea in bar to complainants' said bill.

Further answering, these defendants aver that letters of administration de bonis non on the estate of the said Amos Whiting, were granted by the probate court of Claiborne county, on the twenty-eighth day of October, A. D. 1841, to this defendant, Creighton, and that within two months after the grant of said letters the defendant, Creighton, published in a newspaper printed in said county of Claiborne, a notice requiring all persons having claims against the estate of his intestate, the said Amos Whiting, to exhibit the same within the time limited by law, or the same would be barred, which notice stated the time of granting such letters of administration de bonis non, and was published once a week for six successive weeks; and they aver that at the time of the grant of said letters, and for three years thereafter, the said complainant was a citizen and resident of the State of Mississippi. And they further aver, that the complainants' demand in a form to be recognised by law, as a valid claim against the estate of the said Whiting, was not exhibited to this defendant, Creighton, within eighteen months after the expiration of the time of the publication of said notice; and these defendants ask leave to rely on the fact, as a special cause of demurrer to said bill, that the said bill contains no amount of the presentation of said claim within the time limited by law for that purpose; and if not permitted to do so, then that they may be allowed to insist on the above denial thereof as a plea in bar to complainants' said bill.

Further answering, these defendants aver that the estate of the said Amos Whiting was reported to be insolvent to the March term, A. D. 1841, of the probate court of Claiborne county, and was then so declared by said court, and commissioners appointed to receive and audit claims against the said estate, and that by reason of various delays in relation thereto, the same still remains open for the proof of claims; and these defendants insist that the complainant is bound to make out his claim in the probate court in the manner required by the laws of the State of Mississippi, and has no right to maintain this suit to establish said claim against the estate of Whiting; and they pray that they may be allowed to rely on the same as a plea in bar to said bill; and they further insist that, in any event, the complainants can only be entitled to such a dividend upon his claim as the estate of said Whiting may pay.

Further answering, these defendants insist that complainant is not entitled to any relief for any matter contained in said bill, because he has not alleged or shown that he has sustained any damages by reason of any supposed breach of the said administration bond of said Tunstall on the estate of said Green, nor by reason of any supposed breach of the condition of the bond of

this defendant, Creighton, as the administrator of Whiting; and they ask leave to rely on the failure of the complainant to show in his said bill that he has sustained any damage by reason of the supposed breaches of the said administration bonds of Tunstall and of this defendant, Creighton, as cause of special demurrer to said bill.

Further answering, these defendants submit, that the gravanien of complainants' bill is for a devistavit committed by Tunstall as the administrator of Wheeler C. Green, and they aver that complainants has not established his damages for such devastavit at law; and they ask leave to rely on the failure of complainant to show in his bill that he has established his damages at law for such devastavit, as a special ground of demurrer to said bill, and if not allowed to do so, then they pray that they may be allowed to insist upon their amount that he has not established his damages at law for said devastavit, as a plea in bar to said bill.

These defendants, in conclusion, deny all the fraud, combination, and confederacy wherewith in said bill they stand charged; they pray that complainant may be held to strict proof of all his averments and allegations not herein expressly admitted to be true; and having fully answered, they pray to be hence dismissed with their costs, &c.

F. CREIGHTON,
JONA. McCALEB.

GUION & BAINE,
Sols. for defts.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Personally appeared before the undersigned, a commissioner to take acknowledgments of bail and affidavits, appointed by the circuit court for the district aforesaid, Fletcher Creighton, one of the defendants named in the within answer, who, being duly sworn, saith that the matters and things contained in the said answer, so far as the same are stated as of the knowledge of the said affiant, are true, and so far as they are stated as upon information or belief, he believes them to be true; and further saith not.

F. CREIGHTON.

Sworn and subscribed this 4th day of August, A. D. 1849, before me.

N. McDOUGALL, *Comm.*

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Personally appeared before the undersigned, a commissioner to take acknowledgments of bail and affidavit, appointed by the circuit court for the district aforesaid, Jonathan McCaleb, one of

the defendants named in the written answer, who, being duly sworn, saith that the matters and things contained in the said answer, so far as the same are stated as of the knowledge of the said affiant, are true, and so far as they are stated as upon information or belief, he believes them to be true; and further saith not.

JONA. McCALEB.

Sworn and subscribed this sixth day of August, A. D. 1849, before me.

N. McDOUGALL, *Comm.*

And afterwards, to wit, on the 10th day of September, A. D. 1849, the following exceptions were filed by complainant to the foregoing answer, in the words and figures, to wit:

Exceptions to answer.

In U. S. circuit court, so. dist. Miss., at Jackson, in equity, sitting:

DANIEL GREEN
vs.
CREIGHTON & McCALEB. } 165.

Exceptions taken by complainant to the joint and separate answers of the defendants to the bill of complaint in this cause:

1st. For that the said defendants have not to the best of their knowledge, remembrance, information, and belief answered the allegation of the bill that Wheeler C. Green, late of the county of Claiborne, in the State of Mississippi, departed this life intestate and without issue on or about the fourth day of June, A. D. 1836, leaving goods, chattels, and credits to a large amount in said county, to wit, to the amount of forty thousand dollars or *thereabout*.—See bill, p. 1; ans., p. 1.

2d. Said defendants have not in manner aforesaid set forth whether, as charged in said bill, the said Wheeler C. Green, at the time of his death, and for a long time previous thereto, was a citizen of the State of Mississippi; "nor whether said Wheeler C. Green, at the time of his death, left him surviving as his sole heir-at-law, complainant and Reuben Green, who were brothers of the deceased, and Sally Smith, wife of Asa Smith, the only sister of deceased; nor whether said Reuben, Sally, and Asa are each citizens of the State of New York, and were so at the time of the death of said Wheeler C. Green, and have constantly continued to be so up to the present time.—Bill, p. 1; answ., p. 1.

3d exception. Said defendants have not in manner aforesaid answered and set forth whether the administration bond executed by A. Tunstall and sureties, on the 24th day of October, A. D. 1836, had a condition there underwritten, as set forth in

said bill on page 2d, between the lines of said bill, marked 1 "and 30."

4th exception. Said defendants have not answered and set forth in manner aforesaid, whether said slaves, as charged in said bill, were all brick-makers engaged in the business of making brick at the same time the same came to the possession of said Tunstall, on a brick-yard belonging to the estate of the said Wheeler C. Green, deceased; nor whether said Tunstall continued to employ said slaves in the business of making brick for a series of years thereafter, until the slaves had manufactured about three millions of bricks of good quality, and the ordinary size and material for house building and like purposes; nor whether said bricks "were worth from nine to ten dollars per thousand at the yard where they were made;" nor whether "said Tunstall sold said bricks, without authority, for a sum not less than nine dollars per thousand."

5 "exception." Said defendants have not in manner aforesaid, answered and set forth whether said bricks were nett profits in the hands of said Tunstall, to the amount of at least nine dollars per thousand bricks, as charged in the bill.

6 "exception." Said defendants have not in manner aforesaid, answered and set forth, whether on the fifth day of August, A. D. 1837, the said Reuben Green, and the said Asa Smith and Sally Smith, by deed duly made and executed, bearing date the fifth day of August, A. D. 1837, in consideration of nine thousand dollars to them in hand paid, &c., has granted, &c., by said deed to complainants, &c., all their right, title, and interest of, in and to all and singular the estate, as well real as personal of the said Wheeler C. Green, deceased, and that thereby said complainant became sole distributee, &c. The allegations of the bill on pages 3 and 4, between the lines marked "1" and "34," are wholly unanswered.

7th exception. The defence set up by the answer that A. Tunstall was insane at the time the decree was obtained against him in the probate court of Claiborne county, as set forth in said answer, is illegal, impertinent, irrevalent, and cannot be considered by this court, and should be stricken from the answer.

8th exception. The defence set up in said answer that John L. Torrey, the administrator of said Tunstall, in the year 1843, offered an account of the administration of said Tunstall on the estate of said Green, which account was refused by said probate court, together with exhibit No. 1 to said answer, is impertinent, *irevalent*, and illegal, and should be stricken from the answer.

9th exception. Said defendants have not answered and set forth in manner aforesaid the allegation of the bill, that said Tunstall did not make out and render a just and true account of his actings and doings in the administration of said estate, although he was often requested so to do by the said probate court.—See bill, p. 5.

10th exception. Said defendants have not answered in manner aforesaid the allegation in the bill, that said Tunstall did not pay to the complainant the sum of $61,194 76-100, being the amount of the decree of the probate court in favor of complainant.—See bill, p. 5.

11th exception. Said defendants have not in manner aforesaid answered the allegation of the bill, "that since the appointment of the said Fletcher Creighton as administrator de bonis non, the unadministered goods, chattels, and credits of the said Amos Whiting to a very large amount have come to the hands, knowledge, and possession of him, the said Fletcher Creighton; of all of which complainant seeks a full discovery from said Fletcher; and said defendant, Creighton, has utterly failed and refused to make any discovery, or to state any account of his administration.

12th exception. Complainant excepts to the defence set upon said answer by said Creighton, that said Creighton cannot ~~cannot~~ make the discovery and disclosure of the account and vouchers of said Creighton, administrator, &c., sought by complainants, without procuring certified copies of his accounts rendered and vouchers produced in the probate court of Claiborne county, and insists that said Creighton is bound to account anew in this court and make a full discovery of all his actings and doings as administrator, with legal vouchers therefor.

13th exception. Said defendants have not in manner aforesaid answered the allegation of the bill, that he, the said Fletcher Creighton, has in his hands and under his control at interest a large amount of equitable assets of said estate of Amos Whiting, deceased, which cannot in any form be reached at law, and of which complainant seeks a full discovery; that the same are now, and have been ever since the appointment of him, the said Fletcher, at interest with the said Jonathan McCaleb, who has the use of the same, and who is the surety of the said Fletcher Creighton in his administration bond." No discovery whatever is made to this allegation in the bill."

14th exception. Said defendants have not in manner aforesaid answered the allegation of the bill, that the said Fletcher Creighton, as administrator as aforesaid, is insolvent."

15th exception. Said defendants have not in manner aforesaid answered whether the administration bonds of said Creighton, with the conditions thereto annexed, were correctly set forth in said bill.

16th exception. Appended to said bill are ten special interrogatories, and by a note appended to said bill, said defendants were required to answer each and every of said ten special interrogatories, yet said defendants have not answered nor attempted to answer any or either of the same, nor any part thereof.

17th exception. Said defendants have not in their answer admitted assetts in the hands or possession of said Creighton suffi-

cient to pay the claim of complainants, nor have they or either of them set forth in their answer a just, full, and true account of the goods and chattels, and credits and effects of the said estate of the said Amos Whiting, deceased, which have come to the hands, knowledge, or possession of the said Creighton, or of any other person or persons for him, as required by said bill.

In all of which particulars the said answers of said George Lake and Jonathan McCaleb are imperfect, insufficient, and evasive, and the complainants therefor excepts thereto, and prays that said defendants may put in further and better answers to said bill of complaint, and that said defendants be required to answer and account fully, in accordance with the *prays* of said bill.

JOHN D. FREEMAN,
Sol. for complainants.

And afterwards, to wit, at the May rules, A. D. 1850, this cause was set for hearing on the exceptions to the answer of defendants, filed herein.

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the twenty-third day of May, A. D. one thousand eight hundred and fifty, the following order was entered in said cause, to wit:

In chancery.

DANIEL GREEN
vs. } 165.
CREIGHTON & MCCALEB.

Set for hearing in exceptions to answers. Ordered by the court that the 12th and 15th exceptions to answer herein be sustained, all other exceptions overruled, and leave given defendants to answer over within sixty (60) days.

And afterwards, to wit, on the 20th day of July, A. D. 1850, the following amended answer was filed in this cause, in the words and figures following, to wit:

Circuit court of the United States.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

DANIEL GREEN
vs. } 165.
CREIGHTON & MCCALEB.

The additional and amended answer of Fletcher Creighton and Jonathan McCaleb, to the bill of complaint exhibited against them in the circuit court of the United States, for the southern district of Mississippi, by Daniel Green:

These defendants, in obedience to the order of this honorable

court, made on the twenty-third day of May, A. D. 1850, in the above entitled cause, for a further and amended answer to the said bill of complaint, answering, say:

For answer to 1st interrogatory. They answer this interrogatory in the affirmative.

For answer to 2d interrogatory. They refer to the accounts of defendant, Creighton, as adm'r of Whiting, copies of which are herewith filed as exhibits Nos. 1, 2, 3, 4, 5, and 6.

For answer to 3d interrogatory. "Admit the sum of $5,800 is in the hands of defendant, McCaleb, at legal interest. The sum of $3,417, due Nov'r 28, 1847, is owing by John M. Crapoo, secured by his note, with Kendell, John H. Dale, John Burnet, and Charles Ihrein as his sureties; and the sum of $1,236 is due by David and Joseph Briggs. All said parties reside in Claiborne county, except Dale and Kindall, who live in Louisiana. About $1,000 is also due by Wm. H. Martin, of Claiborne county.

For answer to 4th interrogatory. "They believe said Wheeler C. Green did die intestate as alleged. They know not whether complainant, and his brother and sister, are his sole heirs-at-law, nor do they know anything about his heirs.

For answer to 5th interrogatory. "They have no knowledge whatever on the subject of this interrogatory.

For answer to 6th interrogatory. "They answer this *interoggatory* in the affirmative.

For answer to 7th interrogatory. "They answer this interrogatory in the affirmative.

For answer to 8th interrogatory. They believe that said Tunstall as said administrator did receive the slaves, but they know not whether he made the bricks, cut the wood, or receive the proceeds, or hire out the slaves, and received the proceeds as charged in the bill or otherwise.

For answer to 9th interrogatory. "To the best of their knowledge, they answer this interrogatory in the affirmative.

For answer to 10th interrogatory. "They know nothing in regard to Tunstall wasting or converting to his own use the estate of said Wheeler C. Green.

"These defendants, in further compliance with the order of this honorable court, filed herewith duly certified copies of the six annual administration accounts of Fletcher Creighton with the estate of Amos Whiting, marked Nos. 1, 2, 3, 4, 5, and 6, which they pray may be taken as part of their original and amended answers.

And these defendants having now fully answered, and complied with the orders of this honorable court in this behalf, pray to be hence dismissed with their costs, &c.

United States of America, southern district of Mississippi.
County of Claiborne, ss.

"Personally appeared before the undersigned, commissioner to take acknowledgments of bail and affidavits, in and for the circuit court of the United States, for the southern district of Mississippi, the within named Fletcher Creighton and Jonathan McCaleb, who, having been first duly sworn, made oath that the facts stated by them in the foregoing answer *and* true, to the best of their knowledge and belief.

F. CREIGHTON,
JONA. McCALEB.

Sworn and subscribed before me, this 17th day of July, A. D. 1850.

N. McDOUGALL, *Comm.*

And afterwards, to wit, on the fifth day of September, A. D. 1850, the following replication was entered in this cause, to wit:

Replication.

In the circuit court of the United States for the southern district of the State of Mississippi, in equity sitting:

The replication of Daniel Green, complainant, to the answers and amended answers of Fletcher Creighton and Jonathan McCaleb, heretofore filed in this cause:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifest insufficiencies of the said answers, amended answers, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that said answers and amended answers of said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant without this, that every other matter or thing whatsoever in the said answer contained, material or effectual, in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

"JOHN D. FREEMAN,
Sol. for repliant."

And afterwards to wit, on the twelfth day of November, A. D. 1850, the following order was entered in said cause, in the words and figures following, to wit:

In chancery.

DANIEL GREEN
vs.
CREIGHTON & MCCALEB. } 165.

On motion, it is ordered by the court that Samuel N. Baldwin, of Claiborne county, and William H. Brown, of Hinds county, in this district, be appointed commissioners to take testimony in this cause.

And afterwards, to wit, on the tenth day of May, A. D. 1851, the following order was entered in this cause, in the words and figures following, to wit:

In chancery.

DANIEL GREEN
vs.
CREIGHTON & MCCALEB. } 165.

On motion of complainant, by sol., it was ordered by the court that James A. Marshall, of Grand Gulf, Claiborne county, Mississippi, and Paris G. Clark, of Auburn, Cayuga co., New York, be appointed commissioners to take testimony in this cause, under rule 67. On motion, it is further ordered by the court that the time for taking testimony in this cause be extended five months.

And afterwards, to wit, on the 12th day of May, A. D. 1835, the following order was entered in said cause, to wit:

In equity.

DANIEL GREEN
vs.
CREIGHTON & MCCALEB.

Death of defendant, Jonathan McCaleb, suggested, and leave given complainant to revive in the name of Fletcher Creighton, of Jonathan McCaleb, deceased.

And afterwards, to wit, on the 13th day of March, A. D. 1834, the following bill of revivor was filed in this cause by said defendants:

Bill of revivor.

To the honorable the judges of the circuit court of the United States for the southern district of the State of Mississippi:

Daniel Green, who is a citizen of the State of Arkansas, brings this his bill of revivor against Fletcher Creighton, executor of the last will and *and* testament of Jonathan McCaleb, deceased, who de-

parted this life day of , in the county of Claiborne, in the State of Mississippi, in said southern district, &c., and in which said county and district said Creighton, executor of said McCaleb, now resides, and is a citizen thereof.

Complainant further states, that on the 23d day of February, A. D. 1848, he filed his original bill in this court against said Fletcher Creighton and Jonathan McCaleb, making certain charges and praying certain relief touching the premises, to which *complaint* begs to refer.

Complainant further states, that subsequently, said defendants to said original bill offered and filed their demurrer to said bill, which upon argument was overruled; and therefore said defendants, Creighton and McCaleb, filed their answers and amended answers to said bill, and said complainant, on the 5th day of September, A. D. 1850, filed his replication thereto. And complainant further states, that since the filing of said answers and amended answers by said Creighton and McCaleb, and the replication thereto by complainant, the said Jonathan McCaleb, on the day of , departed this life, leaving the said Fletcher Creighton his sole executor. And complainant further states, that subsequent thereto, the said Fletcher Creighton qualified as executor of said McCaleb, deceased, and took upon himself the duties of executor of said McCaleb, whereby said suit became abated as to said McCaleb, and said complainant became entitled to have said cause revived against said Fletcher Creighton, executor of said McCaleb, deceased.

Complainants therefore prays that said Fletcher Creighton, executor of said McCaleb, deceased, may be made a party defendant to this suit, as well to the original as to the bill of revivor, and compelled to answer this bill of revivor, that said cause may be revived and stand in the same condition as between the original parties at the time the abatement happened, and that said Creighton may admit assets in his hands and possession of said Jonathan McCaleb, dec'd, sufficient to pay and satisfy your orator's claim, as set forth his original bill, or that said Cheighton may sit for a full and true account of the effects of said Jonathan McCaleb that may have come to his hands, knowledge, or possession.

Complainant further prays that subpœna may issue to said Creighton, executor of said McCaleb, when said cause rendered, and the said defendant, Creighton, required to answer this bill of revivor, complainant prays as in the original bill.

JOHN D. FREEMAN,
Sol. for compt.

And afterwards, to wit, on the 13th day of March, A. D. 1854, the following writ of subpœna issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States to Fletcher Creighton, executor, &c., of Jonathan McCaleb, deceased, "greeting:"

For certain causes offered before us in our circuit court, for the southern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court in and for said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of May next, to answer to bill of complaint exhibited against you by Daniel Green, complainant in our said court, and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, A. D. one thousand eight hundred and fifty-three, and in the 78th year of the independence of the United States.

[L. S.]

"Issued the 13th day March, 1854."

The defendant is required to enter his appearance in this suit in the clerk's office, on or before the day to which this writ is returnable, otherwise the bill may be taken pro confesso.

W. H. BROWN, *Clk.*

To the marshal of the southern district of Mississippi to execute and return.

The marshal's deputation.

I nominate and appoint J. H. Duncan my special deputy to execute and return this process, this 13th March, 1854.

The Marshal's return.

Executed March 22d, 1854.

RICHARD GRIFFITH, *Marshal.*
By J. H. DUNCAN, *D. M.*

And afterwards, to wit, on the 11th of September, A. D. 1854, the following agreement was entered in said cause:

Agreement.

In the circuit court of the United States, for the southern district of Mississippi.

In equity.

DANIEL GREEN
vs.
FLETCHER CREIGHTON et als. } 165.

In equity.

SAME
vs.
GEORGE LAKE et als.

Whereas Daniel Green, the complainant in the above cause, has departed this life, and Eveline G. Green, his widow, has become his administratrix, and Jonathan McCaleb, one of the defendants in said causes, has also deceased, and Fletcher Creighton has become his executor, now, it is hereby agreed by the undersigned, counsel for each party, that said cause shall stand revived in the name of said Eveline G. Green, widow and administratrix of Daniel Green, deceased, and also against Fletcher Creighton, executor of said Jonathan McCaleb, deceased, and that said Creighton, as said executor, adopts the same answer he has hereto filed in these causes, and that said causes may progress as if said parties had not deceased.

JOHN D. FREEMAN,
Sol. for Comp't.

Sept. 1st, 1854. WHARTON, *for Defts.*

Proof.

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit.

The President of the United States to James A. Maxwell, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining James A. Gage, Sylvester C. Keyes, and Nicholas McDougall, in a certain cause now depending in the circuit court of the United States, for the district aforesaid, wherein Daniel Green is complainant, and Fletcher Creighton, adm'r de bonis non of Amos Whiting, dec'd, and Jonathan McCaleb, *and* defendants, you are requested at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath,

and their examination into the circuit court aforesaid you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the 1st Monday in May, in the year of our Lord one thousand [L. S.] eight hundred and '51, and in the 75th year of the independence of *of* the United States of America.

Issued the 12th day of July, 1851.

W. H. BROWN, *Clk.*
Per CHAS. H. ROGERS, *D. C.*

Commissioner's certificate.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Southern district of Missis.

I, James A. Maxwell, commissioner within named, do hereby certify that in pursuance of the within *commissioner*, I have called and caused the witnesses therein named to appear before me; that I have diligently examined them on oath, and have reduced their examination to writing, which examination by them and each of them sworn to and subscribed before me at the times and places therein stated, is hereunto annexed and plainly set forth, and together with this commission to said court, in obedience to the within commission.

Given under my hand and seal at Grand Gulf, this 13th day of August, A. D. 1851.

JAMES A. MAXWELL, *Comm'r.*

Interrogatories.

Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

In chancery.

DANIEL GREEN
vs.
FLETCHER CREIGHTON, adm. de bonis non of AMOS WHITING, dec'd, and JONATHAN MCCALEB, his surety. } No. 165.

Copy of interrogatories.

Interrogatories to be propounded to James A. Gage, a witness on the part of said Daniel Green in the above entitled cause, of Port Gibson, Claiborne county, Miss., before James A. Maxwell, a commissioner duly appointed by said court.

Interrogatory first. What your name, age, and occupation?

2d. Are you the keeper of the records and papers of the probate court of Claiborne county, and have the lawful custody of said records and papers?

3d. Can you produce from the minutes and records of said court of probates, a true copy of the order revoking the letters of administration of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased; if so, produce said copy, and state the date of said order, so far as it appears of record on the minutes of said court, and your testimony respecting the same?

4th. Can you produce from the minutes and records of said court of probates, a true copy of the order revoking the letters of administration of George Lake and Jeremiah M. Rhodes, and Maria Louisa Rhodes, his wife, administrators and administratrix of Amos Whiting, deceased; if so, produce said copy, and state the date of said order and your testimony respecting the same?

5th. Can you produce a true copy of the inventory and appraisement of Albert Tunstall, adm'r of the estate of Wheeler C. Green, deceased, including the inventory of debts due said estate on file and of record in your office; if so, produce the same with your testimony thereto.

6th. Can you produce a true copy from the original inventory and appraisement of Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, on file and of record in *you* office; and if so, produce the same to the commissioner, with your testimony respecting the same, and such statements as you may deem proper to illustrate the same?

7th. Can you produce from the minutes and records of said court of probates, a true copy of the exceptions filed by Fletcher Creighton as administrator de bonis non of Amos Whiting, deceased, with the time of filing the same to the claim of Daniel Green against said Creighton's intestate, on account of the suretyship of said intestate for said Tunstall, as administrator of said W. C. Green, deceased, and the liability of said intestate as such surety; if so, produce the same with the date, and state your testimony respecting the same.

Interrogatories to be propounded to James A. Maury, a witness for said Green in the above entitled cause, residing at Port Gibson, Claiborne county, Miss., before James A. Maxwell, commissioner as aforesaid.

Interrogatory 1st. What is your name, age, and occupation.

2d. Were you ever employed by Fletcher Creighton, adm'r de bonis non of Amos Whiting, deceased, to defend said Creighton as such administrator, or to defend the estate of said Creighton intestate in the probate court of Claiborne, against the claims of Daniel Green, the plaintiff in this suit, on account of the alleged liability of the estate of Amos Whiting, deceased, as the surety

of Albert Tunstall, administrator of Wheeler C. Green, deceased; if so, state the date of your retainer as near as may be, and also state fully the alleged nature of the claim of said Green, and how the same arose, as was alleged, against the estate of Amos Whiting, deceased?

Interrogatories to be propounded to S. C. Keyes, a witness on the part of Daniel Green in the above entitled cause, residing at Grand Gulf, Claiborne county, Miss., before James A. Maxwell, the commissioner aforesaid.

Interrogatory 1st. What is your name, age, and occupation?

2d. Did you know Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased, and did said Tunstall die solvent or insolvent?

3d. At what time did Albert Tunstall take charge of and direct the estate of Wheeler C. Green, deceased?

4th. How and what manner did conduct said estate after he took charge of the same?

5th. Do you *reccolect* the time that said Albert Tunstall was removed by the probate court of Claiborne county from the administration of the estate of said Wheeler C. Green, deceased; if so, state the circumstances that makes you recollect it?

6th. Had you at or before, or about *that* time of said removal of said Tunstall, any conversation with George Lake, administrator of Amos Whiting, deceased, respecting the conduct of said Tunstall as administrator of said Wheeler C. Green, deceased; if so, state the substance of such conversation or conversations, so far as you recollect the same?

7th. Did you understand said George Lake, at that time, to favor the removal of said Tunstall from the *administrator* of the estate of Wheeler C. Green, deceased; and if so, what did you understand to be the reason or reasons of his so favoring such removal; state the particulars so far as you recollect.

8th. Did you know said Wheeler C. Green in his lifetime, and do you know Daniel Green, the plaintiff in this suit, and how long have you known them or either of them?

9th. What relation of affinity or blood did they, the said Wheeler C. Green and the said Daniel Green, sustain to each other?

10th. What was the public reputation in the community where they lived respecting their relationship to each other, and what did they and each of them acknowledge respecting said relationship?

11th. Was said Wheeler C. Green at the time of his death a married man, a widower, or a batchelor, and did he leave any legitimate lineal descendants; and if so, *were they* name them?

12th. Do you know who were the brothers and sisters of said Wheeler C. Green, deceased; give the names of each; state what you know, and also what is the reputation on the subject, and

Interrogatory first. What your name, age, and occupation?

2d. Are you the keeper of the records and papers of the probate court of Claiborne county, and have the lawful custody of said records and papers?

3d. Can you produce from the minutes and records of said court of probates, a true copy of the order revoking the letters of administration of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased; if so, produce said copy, and state the date of said order, so far as it appears of record on the minutes of said court, and your testimony respecting the same?

4th. Can you produce from the minutes and records of said court of probates, a true copy of the order revoking the letters of administration of George Lake and Jeremiah M. Rhodes, and Maria Louisa Rhodes, his wife, administrators and administratrix of Amos Whiting, deceased; if so, produce said copy, and state the date of said order and your testimony respecting the same?

5th. Can you produce a true copy of the inventory and appraisement of Albert Tunstall, adm'r of the estate of Wheeler C. Green, deceased, including the inventory of debts due said estate on file and of record in your office; if so, produce the same with your testimony thereto.

6th. Can you produce a true copy from the original inventory and appraisement of Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, on file and of record in *you* office; and if so, produce the same to the commissioner, with your testimony respecting the same, and such statements as you may deem proper to illustrate the same?

7th. Can you produce from the minutes and records of said court of probates, a true copy of the exceptions filed by Fletcher Creighton as administrator de bonis non of Amos Whiting, deceased, with the time of filing the same to the claim of Daniel Green against said Creighton's intestate, on account of the suretyship of said intestate for said Tunstall, as administrator of said W. C. Green, deceased, and the liability of said intestate as such surety; if so, produce the same with the date, and state your testimony respecting the same.

Interrogatories to be propounded to James A. Maury, a witness for said Green in the above entitled cause, residing at Port Gibson, Claiborne county, Miss., before James A. Maxwell, commissioner as aforesaid.

Interrogatory 1st. What is your name, age, and occupation.

2d. Were you ever employed by Fletcher Creighton, adm'r de bonis non of Amos Whiting, deceased, to defend said Creighton as such administrator, or to defend the estate of said Creighton intestate in the probate court of Claiborne, against the claims of Daniel Green, the plaintiff in this suit, on account of the alleged liability of the estate of Amos Whiting, deceased, as the surety

of Albert Tunstall, administrator of Wheeler C. Green, deceased; if so, state the date of your retainer as near as may be, and also state fully the alleged nature of the claim of said Green, and how the same arose, as was alleged, against the estate of Amos Whiting, deceased?

Interrogatories to be propounded to S. C. Keyes, a witness on the part of Daniel Green in the above entitled cause, residing at Grand Gulf, Claiborne county, Miss., before James A. Maxwell, the commissioner aforesaid.

Interrogatory 1st. What is your name, age, and occupation?

2d. Did you know Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased, and did said Tunstall die solvent or insolvent?

3d. At what time did Albert Tunstall take charge of and direct the estate of Wheeler C. Green, deceased?

4th. How and what manner did conduct said estate after he took charge of the same?

5th. Do you *reccolect* the time that said Albert Tunstall was removed by the probate court of Claiborne county from the administration of the estate of said Wheeler C. Green, deceased; if so, state the circumstances that makes you recollect it?

6th. Had you at or before, or about *that* time of said removal of said Tunstall, any conversation with George Lake, administrator of Amos Whiting, deceased, respecting the conduct of said Tunstall as administrator of said Wheeler C. Green, deceased; if so, state the substance of such conversation or conversations, so far as you recollect the same?

7th. Did you understand said George Lake, at that time, to favor the removal of said Tunstall from the *administrator* of the estate of Wheeler C. Green, deceased; and if so, what did you understand to be the reason or reasons of his so favoring such removal; state the particulars so far as you recollect.

8th. Did you know said Wheeler C. Green in his lifetime, and do you know Daniel Green, the plaintiff in this suit, and how long have you known them or either of them?

9th. What relation of affinity or blood did they, the said Wheeler C. Green and the said Daniel Green, sustain to each other?

10th. What was the public reputation in the community where they lived respecting their relationship to each other, and what did they and each of them acknowledge respecting said relationship?

11th. Was said Wheeler C. Green at the time of his death a married man, a widower, or a batchelor, and did he leave any legitimate lineal descendants; and if so, *were they* name them?

12th. Do you know who were the brothers and sisters of said Wheeler C. Green, deceased; give the names of each; state what you know, and also what is the reputation on the subject, and

how, and where you obtained a knowledge of any such reputation, if there be any?

13th. Do you know anything of the soundness of mind of said Albert Tunstall from 1839 to 1841, inclusive; state fully.

14th. Do you know what the estate of James S. McCaleb, deceased, was reputed to be worth at the time of his death.

15th. Did you know Blount W. Parr, the overseer of said Tunstall in managing the estate of Wheeler C. Green, deceased; and if so, state *wether* he be now living or dead, and the time of his death?

16th. Is said Albert Tunstall living or dead; and if dead, did he die solvent or insolvent.

Interrogatories to be propounded to Nicholas McDougall, a witness on the part of Daniel Green in the above entitled cause, before James A. Maxwell, a commissioner as aforesaid.

Interrogatory 1st. What is your name, age, and occupation?

2d. Did you know Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased; and if so, did you know anything about the soundness of his mind, from 1839 to 1841, inclusive?

3d. Was you judge of the court of probates of Claiborne county during the litigation in said court between said Daniel Green, the plaintiff in this suit, and said Albert Tunstall, on account of the mal-administration of said Tunstall, administrator of Wheeler C. Green, deceased?

4th. In that said litigation, did said Tunstall show a willingness for a speedy settlement of his administration accounts, &c., or did he seek delay?

5th. Did you indulge him, as far as your direction would permit, in order to give him a full and fair opportunity to defend himself?

6th. Did you know B. W. Barr, the principal witness against Tustall in said litigation, and who was Tunstall's overseer in the management of the estate of said Green, deceased; and if so, do you know whether he be living or dead?

Final interrogatory to be propounded to each of the above named witnesses after the cross-interrogatories, if there be any:

Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this *you* examination or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

CRAPOO & FREEMAN, *Sols.*

Cross-interrogatories to be propounded to Sylvester Keyes and Nicholas McDougall:

Int. 1st. Do you not know that Albert Tunstall, for sometime

before he was removed from his administration of the estate of Wheeler C. Green, was wholly incapable from intemperance in drinking of attending properly to business?

Int. 2nd. Do you not know that he was for some time previous to his removal non compos mentes?

Int. 3d. Did he or did he not commit suicide by cutting throat, or in some other mode; and was he not considered insane at the time?

JOHN J. GUION,
For Defts.

The same cross-interrogatories for defts. will be propounded to the same witnesses in case No. 165, and upon their being put and answered in both cases, I agree that the testimony of the witnesses may be taken without further notice.

JNO. J. GUION,
For Defts.

July 5th, 1851.

Circuit court United States.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing interrogatories in chief and cross interrogatories, are truly copied from the originals on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 11th day of July, [L. S.] A. D. 1851, and of the independence of the United States 76th.

W. H. BROWN, *Clk.*
Pr. CHAS. H. ROGERS, *D. C.*

Depositions.

Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

In chancery.

DANIEL GREEN,
vs.
FLETCHER CREIGHTON, adm. de bonis non of AMOS WHITING, dec'd, and JONATHAN MCCALEB, his security.

The depositions of James A. Gage, Sylvester C. Keyes, Nicholas McDougall, *witness* for the complainant, taken before James A. Maxwell, commissioner of said court, and interrogatories and cross-interrogatories herewith returned.

And the said James A. Gage, being by me first duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the direct and cross-interrogatories to him propounded and herewith returned, *in* oath declares, answers and says, in answer:

To interrogatory 1st. My name is James A. Gage. I am thirty-six years old, and I am occupied as clerk of the probate court of Claiborne county, Mississippi.

To interrogatory 2d. I am the keeper of the records and papers of the probate court of Claiborne county, and have the lawful custody of said papers and records.

To interrogatory 3d. I can produce from the minutes and records of said court of probates a true copy of the order revoking the letters of administration of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased; and as requested, I herewith produce said copy, upon which I have put my name for greater certainty, and which is a true copy of said order; and said order is entered on the minutes of said court as of 25th day of March, 1839, as will more fully appear upon reference to the copy produced, marked A.

To interrogatory 4th. I can produce from the minutes and records of said court of probates a true copy of the order revoking the letters of administration of George Lake and Jeremiah M. Rhodes, and Maria Louisa Rhodes, his wife, administrators and administratrix of Amos Whiting, deceased; and as requested, I herewith produce such copy, the date of said order being twenty-fifth day of October, 1841, and upon which I have placed my name for greater certainty, and which constitutes my testimony in answer to this interrogatory, marked B.

To interrogatory 5th. I can produce a true copy of the inventory and appraisement of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased, including the inventory of debts due said estate, on file and of record in my office; and as requested, I herewith produce the same, as part of my answer to this interrogatory, and upon which I have endorsed my name for greater certainty, marked C.

To interrogatory 6th. I can produce a true copy from the original inventory and appraisement of Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, on file and of record in my office; and as requested, I herewith produce the same before the commissioner, and as part of my answer, and upon which I have endorsed my name for greater certainty, marked D.

To interrogatory 7th. I can produce from the minutes and records of said court of probates a true copy of the exceptions filed by Fletcher Creighton, as administrator de bonis non of Amos Whiting, deceased, to the claim of Daniel Green against said Creighton's intestate, on account of the suretyship of said intes-

tate for said Trumbull, as administrator of said Wheeler C. Green, dec'd, and the liability of said intestate as such surety; and as requested, I herewith present the same as part of my answer, and upon which for greater certainty I have rendered my name, and marked E.

JAS. A. GAGE.

Sworn to and subscribed before me, at Port Gibson, Aug. 12th, 1851.

JAMES A. MAXWELL, *Comm'r.*

And the said Sylvester C. Keyes being by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories propounded to him on oath, answers, declares, and says, in answer to—

Interrogatory 1st. My name is Sylvester C. Keyes. I am over forty years of age, and I am a silversmith and jeweller by occupation.

To interrogatory 2d. I knew Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased. Said Tunstall died insolvent.

To interrogatory 3d. In the month of June, 1836, said Tunstall took charge of and continued for some time to direct the matters of the estate of said Wheeler C. Green, deceased. I know this fact from personal observation.

To interrogatory 4th. After said Tunstall took charge of the estate of Wheeler C. Green, deceased, as above stated, he continued to carry on the brick-yard establishment at Grand Gulf, Mississippi, whereof said Green died seized and possessed, working the negroes and stock of the estate in making brick at said yard; and he continued to conduct said estate in this manner so long as he retained the possession thereof, until about the time of his removal.

To interrogatory 5th and 6th. I remember the time that said Tunstall was removed from the office of administrator of said estate by the probate court of Claiborne county. Some of the circumstances that make me remember it are that, in the spring of 1839 Daniel Green, the complainant, and B. W. Parr, now deceased, because apprehensive that Tunstall, the administrator, would run off the negroes belonging to the estate, and they were watching for several days to seize the negroes, so as to prevent their being run off. From what I knew about the matter, I thought so myself that the negroes would be run off. I think I had a conversation with George Lake at that time, administrator of the estate of Amos Whiting, deceased, about the negroes, and he, under the circumstances, *seem* solicitous that Tunstall should be prevented from running the negroes off.

And the said James A. Gage, being by me first duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the direct and cross-interrogatories to him propounded and herewith returned, *in* oath declares, answers and says, in answer:

To interrogatory 1st. My name is James A. Gage. I am thirty-six years old, and I am occupied as clerk of the probate court of Claiborne county, Mississippi.

To interrogatory 2d. I am the keeper of the records and papers of the probate court of Claiborne county, and have the lawful custody of said papers and records.

To interrogatory 3d. I can produce from the minutes and records of said court of probates a true copy of the order revoking the letters of administration of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased; and as requested, I herewith produce said copy, upon which I have put my name for greater certainty, and which is a true copy of said order; and said order is entered on the minutes of said court as of 25th day of March, 1839, as will more fully appear upon reference to the copy produced, marked A.

To interrogatory 4th. I can produce from the minutes and records of said court of probates a true copy of the order revoking the letters of administration of George Lake and Jeremiah M. Rhodes, and Maria Louisa Rhodes, his wife, administrators and administratrix of Amos Whiting, deceased; and as requested, I herewith produce such copy, the date of said order being twenty-fifth day of October, 1841, and upon which I have placed my name for greater certainty, and which constitutes my testimony in answer to this interrogatory, marked B.

To interrogatory 5th. I can produce a true copy of the inventory and appraisement of Albert Tunstall, administrator of the estate of Wheeler C. Green, deceased, including the inventory of debts due said estate, on file and of record in my office; and as requested, I herewith produce the same, as part of my answer to this interrogatory, and upon which I have endorsed my name for greater certainty, marked C.

To interrogatory 6th. I can produce a true copy from the original inventory and appraisement of Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, on file and of record in my office; and as requested, I herewith produce the same before the commissioner, and as part of my answer, and upon which I have endorsed my name for greater certainty, marked D.

To interrogatory 7th. I can produce from the minutes and records of said court of probates a true copy of the exceptions filed by Fletcher Creighton, as administrator de bonis non of Amos Whiting, deceased, to the claim of Daniel Green against said Creighton's intestate, on account of the suretyship of said intes-

tate for said Trumbull, as administrator of said Wheeler C. Green, dec'd, and the liability of said intestate as such surety; and as requested, I herewith present the same as part of my answer, and upon which for greater certainty I have rendered my name, and marked E.

JAS. A. GAGE.

Sworn to and subscribed before me, at Port Gibson, Aug. 12th, 1851.

JAMES A. MAXWELL, *Comm'r.*

And the said Sylvester C. Keyes being by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories propounded to him on oath, answers, declares, and says, in answer to—

Interrogatory 1st. My name is Sylvester C. Keyes. I am over forty years of age, and I am a silversmith and jeweller by occupation.

To interrogatory 2d. I knew Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased. Said Tunstall died insolvent.

To interrogatory 3d. In the month of June, 1836, said Tunstall took charge of and continued for some time to direct the matters of the estate of said Wheeler C. Green, deceased. I know this fact from personal observation.

To interrogatory 4th. After said Tunstall took charge of the estate of Wheeler C. Green, deceased, as above stated, he continued to carry on the brick-yard establishment at Grand Gulf, Mississippi, whereof said Green died seized and possessed, working the negroes and stock of the estate in making brick at said yard; and he continued to conduct said estate in this manner so long as he retained the possession thereof, until about the time of his removal.

To interrogatory 5th and 6th. I remember the time that said Tunstall was removed from the office of administrator of said estate by the probate court of Claiborne county. Some of the circumstances that make me remember it are that, in the spring of 1839 Daniel Green, the complainant, and B. W. Parr, now deceased, because apprehensive that Tunstall, the administrator, would run off the negroes belonging to the estate, and they were watching for several days to seize the negroes, so as to prevent their being run off. From what I knew about the matter, I thought so myself that the negroes would be run off. I think I had a conversation with George Lake at that time, administrator of the estate of Amos Whiting, deceased, about the negroes, and he, under the circumstances, *seem* solicitous that Tunstall should be prevented from running the negroes off.

To interrogatory 7th. I did understand said Lake at the time to favor the removal of said Tunstall from the administration of the estate of Wheeler C. Green, dec'd; and the reason that he alleged was that he thought that Tunstall was managing the affairs of the estate of Wheeler C. Green, dec'd, very badly; that he (Lake) was administrator of Amos Whiting, and that Whiting in his lifetime had become security on Tunstall's bond, as administrator of Wheeler C. Green, dec'd. The above were the reasons by him alleged why he favored the removal of said Tunstall as administrator of the estate of Wheeler C. Green, dec'd, so far as I now recollect.

To interrogatory 8th. I knew said Wheeler C. Green in his life, and I knew Daniel Green, the plaintiff in this suit; my acquaintance with them commenced fifteen or sixteen years ago, from which time I *said* W. C. Green to the day of his death, and I have known the said Daniel from my first acquaintance to the present time.

To interrogatory 9th. The Wheeler C. Green and Daniel Green were brothers.

To interrogatory 10th. The public reputation of the community where they lived respecting the relationship to each other of said Daniel Green and Wheeler C. Green was, that they were brothers, and they each acknowledged personally and publicly, and called and treated each other as brothers.

To interrogatory 11th. Said Wheeler C. Green, at the time of his death, was not married, nor was he a widower, but was a batchelor; he left no legitimate lineal descendants within my knowledge, nor that I ever heard of.

To interrogatory 12th. I knew who were the brother and sister of said Wheeler C. Green, deceased. He left one brother named Reuben Green, and one sister named Sarah or Sally, married to a man by the name of Smith. I have no personal knowledge of their relationship; my belief is founded on the declarations of Wheeler C. Green in his lifetime. Daniel, Sally, and their father made heirs, and at Auburn, New York; and the reputation here and there is, that they were brother and sister; they acknowledged and treated each other as such, and were so generally acknowledged and considered by and among all their acquaintances.

To interrogatory 13th. I knew said Albert Tunstall in the years 1839, 1840, and 1841; I resided in the same town with him, and saw him very often, probably every day, and I think I know something of the condition of his mind during that period. I then and still consider that during that period a man of sound mind, and he was so considered by the community in which he lived.

To interrogatory 14th. I do not know what the estate of James S. McCaleb, deceased, was worth; he was reputed to be rich at the time of his death.

To interrogatory 15th. Said Albert Tunstall is dead, and he died insolvent.

To interrogatory : I knew Blount W. Parr, now deceased, who was overseer of said Tunstall in the management of the estate of Wheeler C. Green, deceased. Said Parr is dead; he died sometime in the year 1845.

In answer to the final interrogatory, nothing further occurs to my mind beyond what I have stated and may state, in answer to the cross-interrogatories of defendants, which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may material to the subjects of this examination or the matters in question of this cause.

S. C. KEYES.

Sworn to and subscribed before me, at Grand Gulf, Aug. 13th, 1851.

JAMES A. MAXWELL, *Commr.*"

In answer to cross-interrogatory 1st by the defendants: I knew said Tunstall from 1835 to the day of his death; I do not know that he, for some time before he was removed from the administration of the estate of Wheeler C. Green, dec'd, was wholly incapable from intemperance in drinking of attending properly to business. He was intemperate from drinking during that period, but he was no more so than many others that I who now attend to this same business. His reputation at that time was, that his drinking did not incapacitate him from transacting his business correctly and properly; in fact, at that day most of the business men then drank freely.

To cross-interrogatory 2nd. I knew and state that said Tunstall was not for some time, or at any time from my acquaintance with him until his removal non compos mentis; on the contrary, he was during that period of sane mind, and I never heard until quite recently that the contrary was alleged.

To cross-interrogatory 3d. Said Tunstall committed suicide by cutting his throat; I was the first person that got to him after the act, and he was then dead. For several days previous to the commission of the act he had mania a potu.

S. C. KEYES.

Sworn to and subscribed before me, at Grand Gulf, August 13th, 1851.

JAS. A. MAXWELL, "*Comm'r.*"

And the said Nicholas McDougall being by me, commissioner as aforesaid, duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the direct and cross-interrogatories propounded to him on oath, declares, answers, and says, in answer:

To interrogatory 1st. My name is Nicholas McDougall. I was seventy years old last month, and am an acting justice of the peace in and for Claiborne county, Mississippi.

To interrogatory 2d. I knew Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased. I knew him during the years 1839, 1840, and 1841, but was not particularly cognizant of the condition of his mind during that period.

To interrogatory 3d. I was judge of the probate court of Claiborne county, Mississippi, during the litigation in said court between Daniel Green, the plaintiff in this suit, and Albert Tunstall, on account of the mal-administration of said Tunstall, administrator of the estate of Wheeler C. Green, deceased.

To interrogatory 4th. In that litigation said Tunstall did not show a willingness for a speedy settlement of his administration accounts; delay appeared to be his object.

To interrogatory 5th. I did indulge him, in order to give him a fair opportunity to defend himself.

To interrogatory 6th. I knew B. W. Parr, mentioned in this interrogatory; I think he is dead.

To the final interrogatory. I can think of nothing further that would be of any benefit to either of the parties.

To cross-interrogatory 1st. I knew nothing of his incapacity at the time spoken of in this cross-interrogatory, but I do know that Tunstall was intemperate for some time before his death.

To cross-interrogatory 2d. I do not know that said Tunstall was, for some time previous to his removal, non compos mentis during the time of the litigation between him and Green, the complainant; he *seem* to be, and I considered him of sane mind.

To cross-interrogatory 3d. I have understood that he committed suicide by cutting his throat; but I have no knowledge of the fact. I think he was considered insane a short time before his death.

N. McDOUGALL.

Sworn to and subscribed before me, at Port Gibson, August 12th, 1851.

JAMES A. MAXWELL, *Comm'r.*

James H. Maury, a witness for the complainant, being produced, and having by me, commissioner as aforesaid, being duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the interrogatories propounded to him on oath, answers, declares, and says, in answer—

To interrogatory 1st. My name is James H. Maury; I am forty-five years old, and am a practising attorney at law.

To interrogatory 2d. I was employed by Fletcher Creighton to enter exceptions to allowance of a claim of Daniel Green, against the estate of Amos Whiting. The claim of Green was an administration bond given by Albert Tunstall, as administrator of

Wheeler C. Green, which bond was also executed by Amos Whiting as security. The penalty of the bond, I think, was sixty thousand dollars. Being employed by Fletcher Creighton as administrator of the estate of Whiting de bonis non, I filed exceptions to the report of commissioner, allowing the claim at the May term, 1842, of the probate court of Claiborne county.

JAMES H. MAURY.

To the final interrogatory, he says he is not informed of what are the matters in *customary* between the parties with certainty, and is not aware that he knows any thing that would be of advantage to either of the parties.

J. H. MAURY.

Sworn to and subscribed before me, at Port Gibson, August 12th, 1851.

JAS. A. MAXWELL, *Comm'r.*

Exhibits to Depositions.

THE STATE OF MISSISSIPPI:

Be it remembered, that at a regular term of the hon. probate court, begun and held in and for the county of Claiborne and State aforesaid, at the court-house thereof, on the fourth Monday (25th day) of March, A. D. 1839, among other orders and decrees then and there made by said court was the following, to wit:

DANIEL GREEN
vs.
ALBERT TUNSTALL, *Adm'r.*

On motion of counsel for the petitioner, Daniel Green, it is ordered by the court that the letters of administration granted to Albert Tunstall of all and singular the goods, chattels, and credits which were of Wheeler C. Green, deceased, be and the same are hereby revoked, the same being on his failure to settle his accounts according to law. And ordered further by the court, that he deliver up to this court his letters of administration, and all papers, books, goods, and chattels belonging to said estate, now in his possession, or in the possession of any person or persons for him.

The following order was made by said court at the October term thereof, to wit on the 25th day of October, A. D. 1841:

Ordered, That the letters of administration of George Lake, Maria L. Whiting, (now Maria L. Rhodes,) and Jeremiah M. Rhodes, on the estate of Amos Whiting, deceased, be revoked, they having neglected or refused to give counter-security, or execute a new bond, in compliance with the prayer of the petition

To interrogatory 1st. My name is Nicholas McDougall. I was seventy years old last month, and am an acting justice of the peace in and for Claiborne county, Mississippi.

To interrogatory 2d. I knew Albert Tunstall, formerly administrator of the estate of Wheeler C. Green, deceased. I knew him during the years 1839, 1840, and 1841, but was not particularly cognizant of the condition of his mind during that period.

To interrogatory 3d. I was judge of the probate court of Claiborne county, Mississippi, during the litigation in said court between Daniel Green, the plaintiff in this suit, and Albert Tunstall, on account of the mal-administration of said Tunstall, administrator of the estate of Wheeler C. Green, deceased.

To interrogatory 4th. In that litigation said Tunstall did not show a willingness for a speedy settlement of his administration accounts; delay appeared to be his object.

To interrogatory 5th. I did indulge him, in order to give him a fair opportunity to defend himself.

To interrogatory 6th. I knew B. W. Parr, mentioned in this interrogatory; I think he is dead.

To the final interrogatory. I can think of nothing further that would be of any benefit to either of the parties.

To cross-interrogatory 1st. I knew nothing of his incapacity at the time spoken of in this cross-interrogatory, but I do know that Tunstall was intemperate for some time before his death.

To cross-interrogatory 2d. I do not know that said Tunstall was, for some time previous to his removal, non compos mentis during the time of the litigation between him and Green, the complainant; he *seem* to be, and I considered him of sane mind.

To cross-interrogatory 3d. I have understood that he committed suicide by cutting his throat; but I have no knowledge of the fact. I think he was considered insane a short time before his death.

N. McDOUGALL.

Sworn to and subscribed before me, at Port Gibson, August 12th, 1851.

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Wheeler C. Green, which bond was also executed by Amos Whiting as security. The penalty of the bond, I think, was sixty thousand dollars. Being employed by Fletcher Creighton as administrator of the estate of Whiting de bonis non, I filed exceptions to the report of commissioner, allowing the claim at the May term, 1842, of the probate court of Claiborne county.

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The following order was made by said court at the October term thereof, to wit on the 25th day of October, A. D. 1841:

Ordered, That the letters of administration of George Lake, Maria L. Whiting, (now Maria L. Rhodes,) and Jeremiah M. Rhodes, on the estate of Amos Whiting, deceased, be revoked, they having neglected or refused to give counter-security, or execute a new bond, in compliance with the prayer of the petition

of James S. McCaleb, one of their securities; and with the consent of Jeremiah M. Rhodes, one of said administrators de bonis non, be granted and issued to Fletcher Creighton, upon his taking the usual oath, and entering into bond in the penal sum of one hundred thousand dollars, with James S. McCaleb and Elias C. Hankinson, his securities; which oath was taken and bond executed.

The State of Mississippi to D. H. Turpin, R. H. Bayly, Wm. Bridewell, Jas. T. Harper, and James G. Muir, greeting:

This is to authorize you, or any three of you jointly, to appraise the goods, chattels, and personal estate of Wheeler C. Green, late of Claiborne county, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation hereunto annexed, a certificate whereof you are to return, annexed to an inventory of the said goods, chattels, and personal estate by you appraised, in dollars and cents; and in the said inventory you are to set down in a column or columns opposite to each article the value thereof.

[L. S.] Witness T. G. McIntyre, judge of probate of the county of Claiborne, this 24th day of October, A. D. 1836.

JOHN WETHERALL, *Clk.*

We, Ro. H. Bayley, Wm. Bridewell, and James G. Muir, do swear that we, well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of Wheeler C. Green, deceased, so far as the same shall come to our sight and knowledge, and will in all respects perform our duty as appraisers, to the best of our skill and judgment, so help us God.

JAMES G. MUIR, [L. S.]
RO. H. BAYLY, [L. S.]
WM. BRIDEWELL. [L. S.]

Sworn to and subscribed before me, this twenty-seventh day of October, A. D. 1836.

LEWIS CAWLEY, *J. P.*

We, the undersigned appraisers, do certify that the sheet hereunto annexed contains a full appraisement of the goods, chattels, and personal estate of Wheeler C. Green, deceased, so far as the same has come to our sight and knowledge, amounting to $20,214 25, made agreeable to the above warrant and oath.

JAMES G. MUIR, [L. S.]
RO. H. BAYLY, [L. S.]
WM. BRIDEWELL. [L. S.]

1702

Appraisement est. of W. C. Green, dec'd.

1	bedstead, $12; 1 bureau, $35 00 - - -	$47 00
1	table, $5; 6 chairs, $2; 6 do., 75 cts. - -	21 50
1	bedstead, 1 mattrass, 1 feather bed, 1 pr. sheets, 1 pr. blankets, 1 clk. spread, 2 pillows, 1 slip, and 1 musquito bar - - - -	60 00
2	oil cloth covers, $1; ly. and lint cotton, $1 50 -	3 50
1	blanket, 50; 2 sheets, $1; 1 spread, 25 - -	2 75
1	pine table, $2; 1 large harrow, $10 - -	12 00
4	yoke oxen, $60; 2 horses for $150 - -	390 00
3	wheel-barrows, $1; 1 lot brick, $2,500 - -	2,503 00
1	lot wood, $750; 1 lot lumber, $200 - -	950 00
10	head cattle, $8; 30 hogs, (in range, $250) -	155 00
1	cross-cut saw, $9; 16 axes, $1; 1 x cut saw, $5 -	30 00
10	iron wedges, $7 50; 1 truck waggon, $5 -	12 75
1	pr. pistols, $15; 1 silver lever watch, $50 -	65 00
1	shot gun, $10; 2 ox carts, $50 - - -	60 00
1	negro boy Peter, aged about 60 years -	400 00
1	" James, " 50 " -	500 00
1	" Vernon, " 23 " -	1,000 00
1	" Philip, " 25 " -	2,000 00
1	" Aaron, " 25 " -	1,500 00
1	" Bob, " 26 " -	1,200 00
1	" Henry, " 35 " -	1,200 00
1	" Henry, of Ky., " 30 " -	1,200 00
1	" Dick, " 18 " -	1,200 00
1	" George, " 4 " -	800 00
1	negro girl Mariah, " 20 " -	200 00
1	" Mary, " 25 " -	1,200 00
1	" Nanney, " 25 " -	800 00
1	" Elizabeth, " 25 " -	800 00
1	" Fanny, " 30 " -	600 00
1	" Betsy, " 20 " -	800 00
	Amount of appraisement -	$20,214 25
	of personal property.	
	Amount of apprst. personal property brot. over -	$20,214 25

Amount of outstanding debts, viz:

Carthman & Rogers - - - - -	551 21
Edwin W. Palmer - - - - -	248 50
Danl. B. Egan - - - - -	103 00
A. W. Wilson, de'd - - - -	773 93
J. Beesley's note in suit - - - -	1,400 00
F. W. Newill - - - - -	66 40
C. G. Jeffers - - - - - -	41 31
R. M. Sissions - - - - -	53 46

of James S. McCaleb, one of their securities; and with the consent of Jeremiah M. Rhodes, one of said administrators de bonis non, be granted and issued to Fletcher Creighton, upon his taking the usual oath, and entering into bond in the penal sum of one hundred thousand dollars, with James S. McCaleb and Elias C. Hankinson, his securities; which oath was taken and bond executed.

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JAMES G. MUIR, [L. S.]
RO. H. BAYLY, [L. S.]
WM. BRIDEWELL. [L. S.]

Sworn to and subscribed before me, this twenty-seventh day of October, A. D. 1836.

LEWIS CAWLEY, *J. P.*

We, the undersigned appraisers, do certify that the sheet hereunto annexed contains a full appraisement of the goods, chattels, and personal estate of Wheeler C. Green, deceased, so far as the same has come to our sight and knowledge, amounting to $20,214 25, made agreeable to the above warrant and oath.

JAMES G. MUIR, [L. S.]
RO. H. BAYLY, [L. S.]
WM. BRIDEWELL. [L. S.]

1702

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1	lot wood, $750; 1 lot lumber, $200 - -	950 00
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1	cross-cut saw, $9; 16 axes, $1; 1 x cut saw, $5 -	30 00
10	iron wedges, $7 50; 1 truck waggon, $5 -	12 75
1	pr. pistols, $15; 1 silver lever watch, $50 -	65 00
1	shot gun, $10; 2 ox carts, $50 - - -	60 00
1	negro boy Peter, aged about 60 years -	400 00
1	" James, " 50 " -	500 00
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1	" Aaron, " 25 " -	1,500 00
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1	" Henry, " 35 " -	1,200 00
1	" Henry, of Ky., " 30 " -	1,200 00
1	" Dick, " 18 " -	1,200 00
1	" George, " 4 " -	300 00
1	negro girl Mariah, " 20 " -	200 00
1	" Mary, " 25 " -	1,200 00
1	" Nanney, " 25 " -	800 00
1	" Elizabeth, " 25 " -	800 00
1	" Fanny, " 30 " -	600 00
1	" Betsy, " 20 " -	800 00
	Amount of appraisement -	$20,214 25
	of personal property.	
	Amount of apprst. personal property brot. over -	$20,214 25

Amount of outstanding debts, viz:

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J. Beesley's note in suit - - - -	1,400 00
F. W. Newill - - - - -	66 40
C. G. Jeffers - - - - - -	41 31
R. M. Sissions - - - - -	53 46

B. F. Holderman	$270 35
W. Stafford	31 92
J. T. Harper	65 90
J. R. Marler	8 75
Samuel Walker	19 40
Walker & Whitman	17 00
John Whiteman	21 50
Mrs. Polly Rundell	10 50
G. H. Schefield	75 71
R. H. Bayly	324 00
L. W. Ballard	38 08
Thomas Hollida	94 40
Thomas Brian	58 08
George Walker	66 18
A. Tarpley	39 22
W. Bridewell	113 30
Geo. W. Summers	23 00
Amos Whiting	590 40
A. Tunstall & Co.	2,015 19
A. Swards & Co.	22 72
W. S. Hays	102 18
S. C. Keyes	8 40
Wm. Duhamon	14 50
White, Turpin, & nephew	2,798 25
Dr. Pollard	3 50
Jno. Benton	31 62
A. B. Maddox's note	17 62
H. T. Palmer	3,424 55
Jeremiah Benton's note	28 00
Sherwood & Kendall	7 50
George Walker	150 00
W. D. Meares	104 50
J. J. Powell	55 00
Evan Griffith's act.	80 68
Irish D. Haddon	20 08
John W. Peers's note	46 00
Thos. Berry's acct.	15 00
Chustichick's note	100 00
Certificate attendance in suit Gordon vs.	22 00
A. Foly's acc.	2,205 00
	$36,592 02

Truly recorded.

J. WETHNALL, *Clk.*
By S. DAVIS, *D. C.*

The State of Mississippi to William R. McAlpin, Benjamin F. West, Francis B. Ragsdale, William Bridges, and William S. Hayes, greeting:

This is to authorize you, or any three of you, jointly to appraise the goods, chattels, and personal estate of Amos Whiting, late of Claiborne county, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation hereunto annexed, a certificate whereof you are to return annexed to an inventory of the said goods, chattels, and personal estate by you appraised, in dollars and cents; and in the said inventory you are to set down in a column or columns, opposite to each article, the value thereof.

[SEAL.] Witness N. M. Gougall, esqr., judge of probate of the county of Claiborne, this 28th day of October, A. D. 1841.

FRED'K J. POOR, *Clk.*

We, William R. McAlpin, B. F. West, and William Bridges, do swear that we will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of deceased, so far as the same shall come to our sight or knowledge, and will in all respects perform our duty as appraisers to the best of our skill and judgment, so help us God.

W. R. McALPIN,
BENJ. F. WEST,
WM. BRIDGES.

Sworn to and subscribed before me, this fourteenth day of November, A. D. 1841.

H. W. ALLEN, *J. P.*

We, the undersigned appraisers, do certify that the sheet hereto annexed contain a full appraisement of the goods, chattels, and personal estate of Amos Whiting, deceased, so far as the same has come to our sight or knowledge, amounting to $22,869, made agreeably to the above warrant and oath.

Witness our hands and seals, the 13th day of November, A. D. 1841.

W. R. McALPIN, [SEAL.]
BENJ. F. WEST, [SEAL.]
WM. BRIDGES. [SEAL.]

Truly recorded.

FRED'K J. POOR, *Clk.*
By H. CARPENTER, *D. C.*

2nd appraisement of A. Whiting, est.

1 negro man named Elijah	- - -	$900 00
1 " " " Woodford	- - -	750 00

1	negro	man	named	Randell	-	$750 00
1	"	"	"	Butten	-	750 00
1	"	"	"	Elick	-	400 00
1	"	"	"	Bill Wood	-	600 00
1	"	"	"	Bill	-	500 00
1	"	"	"	Gabriel	-	300 00
1	"	boy	"	Jno. Thornton	-	400 00
1	"	"	"	Jim	-	375 00
1	"	"	"	Louis	-	375 00
1	"	"	"	Waldo	-	400 00
1	"	woman	"	Maria Clark	-	500 00
1	"	boy	"	Mike	-	225 00
1	"	"	"	George	-	200 00
1	"	woman	"	Hannah Rachel	-	400 00
1	"	girl	"	Henrietta	-	200 00
1	"	woman	"	Jinny	-	300 00
1	"	girl	"	Mahala	-	200 00
1	"	woman	"	Lucy	-	550 00
1	"	"	"	Maria Wood	-	500 00
1	"	girl	"	Sevelda	-	300 00
1	"	boy	"	Will	-	300 00
1	"	"	"	Harrison	-	275 00
1	"	girl	"	Mary	-	150 00
1	"	boy	"	Caleb	-	125 00
1	"	man	"	Dick	-	400 00
1	"	girl	"	Creasy	-	400 00
1	"	boy	"	Henry Beatty	-	300 00
1	"	man	"	Samuel Beatty	-	650 00
1	"	girl	"	Susan	-	175 00
1	"	boy	"	Sampson	-	150 00
				Amount brot. forward	-	$13,400 00
1	negro	boy	named	Alfred	-	750 00
1	"	man	"	Jefferson	-	750 00
1	"	"	"	Oliver	-	750 00
1	"	woman	"	Matilda, and child	-	550 00
1	"	boy	"	Watt	-	225 00
1	"	woman	"	Amanda, and child	-	550 00
1	"	girl	"	Dina	-	275 00
1	"	woman	"	Dina	-	125 00
1	"	girl	"	Cornelia	-	375 00
1	"	boy	"	West	-	350 00
1	"	woman	"	Kitty	-	200 00
1	"	boy	"	Albert	-	275 00
1	"	woman	"	Nelly	-	300 00
1	"	man	"	Sam Thornton	-	600 00
1	"	"	"	Richmond	-	625 00
1	"	"	"	George	-	750 00

1704

1 negro man named Moses	$750 00
1 " " " Old Tom	50 00
1 " " " Sam Ginna	100 00
1 " woman " Lucinda	000 00
1 ox waggon	25 00
1 " cart	30 00
13 ploughs for	25 00
7 cultivators	10 00
3 harrows	6 00
6,000 shingles, at $1	6 00
16 pr. plough gear, a $2	32 00
100 head of hogs, more or less, at $1	100 00
50 " cattle, " " $5	250 00
1 pr. mules	110 00
1 bay horse Eagle	30 00
1 gray " Jim	40 00
	$22,414 00
1 sorrel horse Paddy	25 00
1 dun " Dick	25 00
1 sorrel " Prince	25 00
1 bay mare	60 00
1 sorrel horse Hickory	70 00
4 yoke of oxen, a $50	200 00
1 set of bl'ksmith and carpenters' tools	40 00
1 lot axes	10 00
	$22,869 00

The undersigned, administrator de bonis non of the estate of Amos Whiting, deceased, begs leave to return the foregoing inventory of said estate into court. He also informs the court that a portion of the property included in the said inventory, viz., the slaves, are subject to a mortgage executed by said Whiting in his lifetime in favor of Daniel Vertner.

F. CREIGHTON.

Truly recorded.

FRED'K J. POOR, *Clk.*
By J. A. CARPENTER, *D. C.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, Jas. A. Gage, clerk of the probate court in and for said county, do hereby certify that the foregoing matters are true copies from the original, as the same now appears on record in my office, also the exceptions following, filed by Maury & Sawyer, attorneys for Creighton, are true copies from the original now on file in my office.

1	negro	man	named	Randell	-	$750 00
1	"	"	"	Butten	-	750 00
1	"	"	"	Elick	-	400 00
1	"	"	"	Bill Wood	-	600 00
1	"	"	"	Bill	-	500 00
1	"	"	"	Gabriel	-	300 00
1	"	boy	"	Jno. Thornton	-	400 00
1	"	"	"	Jim	-	375 00
1	"	"	"	Louis	-	375 00
1	"	"	"	Waldo	-	400 00
1	"	woman	"	Maria Clark	-	500 00
1	"	boy	"	Mike	-	225 00
1	"	"	"	George	-	200 00
1	"	woman	"	Hannah Rachel	-	400 00
1	"	girl	"	Henrietta	-	200 00
1	"	woman	"	Jinny	-	300 00
1	"	girl	"	Mahala	-	200 00
1	"	woman	"	Lucy	-	550 00
1	"	"	"	Maria Wood	-	500 00
1	"	girl	"	Sevelda	-	300 00
1	"	boy	"	Will	-	300 00
1	"	"	"	Harrison	-	275 00
1	"	girl	"	Mary	-	150 00
1	"	boy	"	Caleb	-	125 00
1	"	man	"	Dick	-	400 00
1	"	girl	"	Creasy	-	400 00
1	"	boy	"	Henry Beatty	-	300 00
1	"	man	"	Samuel Beatty	-	650 00
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1	negro	boy	named	Alfred	-	750 00
1	"	man	"	Jefferson	-	750 00
1	"	"	"	Oliver	-	750 00
1	"	woman	"	Matilda, and child	-	550 00
1	"	boy	"	Watt	-	225 00
1	"	woman	"	Amanda, and child	-	550 00
1	"	girl	"	Dina	-	275 00
1	"	woman	"	Dina	-	125 00
1	"	girl	"	Cornelia	-	375 00
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1	"	boy	"	Albert	-	275 00
1	"	woman	"	Nelly	-	300 00
1	"	man	"	Sam Thornton	-	600 00
1	"	"	"	Richmond	-	625 00
1	"	"	"	George	-	750 00

1 negro man named Moses	$750 00
1 " " " Old Tom	50 00
1 " " " Sam Ginna	100 00
1 " woman " Lucinda	000 00
1 ox waggon	25 00
1 " cart	30 00
13 ploughs for	25 00
7 cultivators	10 00
3 harrows	6 00
6,000 shingles, at $1	6 00
16 pr. plough gear, a $2	32 00
100 head of hogs, more or less, at $1	100 00
50 " cattle, " " $5	250 00
1 pr. mules	110 00
1 bay horse Eagle	30 00
1 gray " Jim	40 00
	$22,414 00
1 sorrel horse Paddy	25 00
1 dun " Dick	25 00
1 sorrel " Prince	25 00
1 bay mare	60 00
1 sorrel horse Hickory	70 00
4 yoke of oxen, a $50	200 00
1 set of bl'ksmith and carpenters' tools	40 00
1 lot axes	10 00
	$22,869 00

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F. CREIGHTON.

Truly recorded.

FRED'K J. POOR, *Clk.*
By J. A. CARPENTER, *D. C.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

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1704

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1 ox waggon	- - - - -	25 00
1 " cart -	- - - - -	30 00
13 ploughs for	- - - - -	25 00
7 cultivators	- - - - -	10 00
3 harrows	- - - - -	6 00
6,000 shingles, at $1	- - - - -	6 00
16 pr. plough gear, a $2	- - - -	32 00
100 head of hogs, more or less, at $1	- -	100 00
50 " cattle, " " $5	- -	250 00
1 pr. mules	- - - - -	110 00
1 bay horse Eagle	- - - -	30 00
1 gray " Jim	- - - - -	40 00
		$22,414 00
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1 dun " Dick	- - - -	25 00
1 sorrel " Prince	- - - -	25 00
1 bay mare	- - - -	60 00
1 sorrel horse Hickory	- - -	70 00
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F. CREIGHTON.

Truly recorded.

FRED'K J. POOR, *Clk.*
By J. A. CARPENTER, *D. C.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, Jas. A. Gage, clerk of the probate court in and for said county, do hereby certify that the foregoing matters are true copies from the original, as the same now appears on record in my office, also the exceptions following, filed by Maury & Sawyer, attorneys for Creighton, are true copies from the original now on file in my office.

Given under my hand and seal of office, at Port Gibson, this 6th day of August, A. D. 1851.

JAS. A. GAGE, *Clk.*

Exceptions.

Exceptions to the claim of Daniel Green vs. estate of Amos Whiting, deceased, filed by Maury & Sayer for Fletcher Creighton, administrator de bonis non of said estate.

May term of the probate court of the county of Claiborne, 1842.

STATE OF MISSISSIPPI,
Claiborne county, ss.

At this term of the court comes Fletcher Creighton, administrator de bonis non of the goods, chattels, and effects of Amos Whiting, late of said county, deceased, and excepts to the report of John W. Benton, George Dies, and Thomas D. Howard, referees appointed by this court on the claim of Daniel Green against the estate of the said Amos Whiting, deceased; and for cause of exceptions, says that by said report the said claim of $60,000 is by said referees awarded to the said Daniel Green against said estate of said Whiting, without any evidence to support the same.

Secondly, 2*nd.* That the evidence reported by referees is insufficient and also incompetent, and ought not to have been allowed or regarded by the referees.

3d. That the said award of said referees was made without any evidence, wherefore the said Creighton, by his attorneys, prays that the said report and award and decision of said referees be not approved by the court, and that the same be disallowed.

MAURY & SAYER,
Fr. CREGHTON.

Filed 26th May, 1842.

FRED'K J. POOR, *Clk.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit.

"The President of the United States to Paris G. Clark," greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Joseph L. Richardson, Aurelius Wheeler, John Green, Reuben Green, Asa Smith, Sally Smith, and Green, the father of Daniel Green, in a certain cause now depending in the circuit court of the United States for the district aforesaid, wherein Daniel Green is complainant and Fletcher Creighton, admr. de bonis non of estate of Amos Whiting, deceased, and Jonathan McCaleb are defendants, you are requested, at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them

diligently examine on oath, and their examination into the circuit court aforesaid you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the supreme court of the United States, at Jackson, the 1st Monday in May, in the year of our Lord one thousand eight hundred and 51, and in the 75th year of the independence of the United States of America.

[L. S.]

Issued the 12th day of July, 1851.

W. H. BROWN, *Clk.*
Pr. CHAS. H. ROGERS, *D. C.*

The execution of the within commission appears by the depositions hereto annexed, and by the deed of assignment herewith sent, with my certificate thereon.

P. G. CLARK, *Comm'r.*

Interrogatories.

In the circuit court of the United States, southern district of the State of Mississippi.

DANIEL GREEN,
vs.
FLETCHER CREIGHTON, admr. de bonis non of estate of AMOS WHITING, deceased, and JONATHAN MCCALEB. } No 165.

Interrogatories to be propounded to Joseph L. Richardson, Arelius Wheeler, John Green, Asa Smith, Sally Smith, and Green, the father of said Daniel Green, residents of the county of Cayuga, in the State of New York, before Paris G. Clark, of Auburn, Cayuga county, New York, a commissioner appointed by said court to examine the above named witnesses, or such of them as shall appear in the above named cause.

Interrogatory 1st. What is your name, age, and occupation?

Inter. 2nd. Do you know Daniel Green, the complainant in this suit?

Inter. 3d. What relation of affinity or blood do you sustain to him, if any?

Inter. 4th. Did you know Wheeler C. Green, deceased, late of Grand Gulf, Claiborne county, Mississippi?

Inter. 5th. What relation of blood or affinity did you sustain to him in his lifetime?

Inter. 6th. What were the domestic relations of the said Wheeler C. Green at the time of his death; was he a married man, a widower, or a batchelor?

7th. Did said Wheeler C. Green at the time of his death leave any legitimate issue?

8th. Who were his brothers and sister born in lawful wedlock who survived him at the time of his death; state names of each?

9th. Had the said Wheeler C. Green ever any other brothers or sisters whom he survived; and if yea, how many, state their names, and did they or either of them leave any lawful issue, which survived said Wheeler C. Green; state the names and particulars fully?

10th. Do you know the paper marked "A" shown you, bearing date August the 5th, 1837, and purporting to be a deed and assignment to said Daniel Green from Reuben Green, Asa Smith, and Sally Smith, his wife, of their interest in the estate of the said Wheeler C. Green, deceased; and if yea, what do you know about the execution of the same; state fully?

11th. Do you know whether any, and what person or persons ever signed, sealed, and delivered, and fully executed the paper marked 'A,' and shown you; and if yea, state the names of each and the relation of blood or affinity, if any, they bore to the said Wheeler C. Green, deceased?

12th. What legitimate relation of affinity or blood, if either, did the said Daniel Green sustain to the said Wheeler C. Green, deceased, at the time of his death?

Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

JOHN D. FREEMAN,
Sol. for Complainants.

Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing interrogatories are truly copied from the originals on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, the 12th day of July,
[L. S.] A. D. 1851, and of the independence of the United States the 76th.

W. H. BROWN, *Clk.*
Pr. CHS. H. ROGERS, *D. C.*

Depositions.

No. 165. Depositions of Asa Smith, Sally Smith, James Green, and Arelius Wheeler, witnesses produced, sworn, and examined on oath by me, at my office in the city of Auburn, in the county of Cayuga, and State of New York, on the 14th day of August, 1851, by virtue of a commission issued out of the Supreme Court of the United States to me, Paris G. Clark, directed for the examination of Aurelius Green, Joseph L. Richardson, John Green, Reuben Green, and James Green, the father of Daniel Green, witnesses in a cause depending in the circuit court of the United States, for the southern district of Mississippi, between Daniel Green, plaintiff, and Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, and Jonathan McCaleb, are defendants; that is to say, the said Asa Smith, being by me duly sworn, answers to the several interrogatories propounded to him, as follows:

To the first interrogatory, he says: My name is Asa Smith; I am fifty-four years of age, and am a farmer by occupation.

To the second interrogatory, he says: I do.

To the third interrogatory, he says: I married his sister.

To the fourth interrogatory, he says: I did.

To the fifth interrogatory, he says: I married his sister.

To the sixth interrogatory, he says: He was a batchelor; he was never married, to my knowledge.

To the seventh interrogatory, he says: He did not, to my knowledge.

To the eighth interrogatory, he says: His brothers and sisters born in lawful wedlock, and who survived him, and Reuben Green, Daniel Green, and Sally Smith, my wife.

To the ninth interrogatory, he says: He never had any other brothers or sisters than those I have named.

To the tenth interrogatory, he says: I knew the paper marked A, now shown to me, and dated 5th August, 1837; I executed it, and my wife, Sally Smith, also executed it; I know nothing of Reuben Green signing it.

To the eleventh interrogatory, he says: I know that my wife, Sally Smith, and myself, executed, acknowledged, and delivered the said paper to Daniel Green, and that my wife was a sister of Wheeler C. Green; I know nothing further of the execution of the said paper.

To the twelfth interrogatory, he says: Wheeler C. Green and Daniel Green were brothers.

To the last interrogatory, he says: I have no other matter or thing that can be of any benefit or advantage to either of the parties to this suit.

his
ASA ⋈ SMITH.
mark.

7th. Did said Wheeler C. Green at the time of his death leave any legitimate issue?

8th. Who were his brothers and sister born in lawful wedlock who survived him at the time of his death; state names of each?

9th. Had the said Wheeler C. Green ever any other brothers or sisters whom he survived; and if yea, how many, state their names, and did they or either of them leave any lawful issue, which survived said Wheeler C. Green; state the names and particulars fully?

10th. Do you know the paper marked "A" shown you, bearing date August the 5th, 1837, and purporting to be a deed and assignment to said Daniel Green from Reuben Green, Asa Smith, and Sally Smith, his wife, of their interest in the estate of the said Wheeler C. Green, deceased; and if yea, what do you know about the execution of the same; state fully?

11th. Do you know whether any, and what person or persons ever signed, sealed, and delivered, and fully executed the paper marked 'A,' and shown you; and if yea, state the names of each and the relation of blood or affinity, if any, they bore to the said Wheeler C. Green, deceased?

12th. What legitimate relation of affinity or blood, if either, did the said Daniel Green sustain to the said Wheeler C. Green, deceased, at the time of his death?

Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

JOHN D. FREEMAN,
Sol. for Complainants.

Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing interrogatories are truly copied from the originals on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, the 12th day of July, [L. S.] A. D. 1851, and of the independence of the United States the 76th.

W. H. BROWN, *Clk.*
Pr. CHS. H. ROGERS, *D. C.*

Depositions.

No. 165. Depositions of Asa Smith, Sally Smith, James Green, and Arelius Wheeler, witnesses produced, sworn, and examined on oath by me, at my office in the city of Auburn, in the county of Cayuga, and State of New York, on the 14th day of August, 1851, by virtue of a commission issued out of the Supreme Court of the United States to me, Paris G. Clark, directed for the examination of Aurelius Green, Joseph L. Richardson, John Green, Reuben Green, and James Green, the father of Daniel Green, witnesses in a cause depending in the circuit court of the United States, for the southern district of Mississippi, between Daniel Green, plaintiff, and Fletcher Creighton, administrator de bonis non of the estate of Amos Whiting, deceased, and Jonathan McCaleb, are defendants; that is to say, the said Asa Smith, being by me duly sworn, answered the several interrogatories propounded to him, as follows:

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To the ninth interrogatory, he says: He never had any other brothers or sisters than those I have named.

To the tenth interrogatory, he says: I knew the paper marked A, now shown to me, and dated 5th August, 1837; I executed it, and my wife, Sally Smith, also executed it; I know nothing of Reuben Green signing it.

To the eleventh interrogatory, he says: I know that my wife, Sally Smith, and myself, executed, acknowledged, and delivered the said paper to Daniel Green, and that my wife was a sister of Wheeler C. Green; I know nothing further of the execution of the said paper.

To the twelfth interrogatory, he says: Wheeler C. Green and Daniel Green were brothers.

To the last interrogatory, he says: I have no other matter or thing that can be of any benefit or advantage to either of the parties to this suit.

his
ASA ⋈ SMITH.
mark.

Sworn and subscribed before me, this 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

The said Sally Smith, being by me duly sworn, answered the said several interrogatories, as follows:

To the first interrogatory, she says: My name is Sally Smith; I am 53 years old, and by occupation a spinster.

To the second interrogatory, she says: I do.

To the third interrogatory, she says: I am his sister.

To the fourth interrogatory, she says: I did.

To the fifth interrogatory, she says: I am his sister.

To the sixth interrogatory, she says: He was a batchelor; he was never married to my knowledge.

To the seventh interrogatory, she says: He did not.

To the *eight* interrogatory, she says: His brothers and sisters who survived him, and who *are* born in lawful wedlock, were Daniel Green, Reuben Green, and myself.

To the ninth interrogatory, she says: He never had any other brothers or sisters.

To the tenth interrogatory, : I knew the paper marked A, dated 5th August, 1837, and now shown to me; I executed it, and my husband executed it, but I do not know of any other person signing it.

To the eleventh interrogatory, she says: I, and my husband, Asa Smith, executed, acknowledged, and delivered to Daniel Green the said paper; I know nothing further of its execution; I am a sister of Wheeler C. Green.

To the twelfth interrogatory, she says: Wheeler C. Green and Daniel Green were brothers.

To the last interrogatory, she says: I do not know that I know anything else that can be of any benefit to either or any of the parties to this suit.

her
SALLY ⋈ SMITH.
mark.

Sworn to and subscribed before me, the 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

The said James Green, being by me duly sworn, answered the said several interrogatories, as follows:

To the first interrogatory, he says: My name is James; I am 83 years of age, and am a farmer by occupation.

To the second interrogatory, he says: I do.

To the third interrogatory, he says: I am his father.

To the fourth interrogatory, he says: I did.

To the fifth interrogatory, he says: I was his father.

To the sixth interrogatory, he says: He was a batchelor.

To the seventh interrogatory, he says: He did not.

To the *eight* interrogatory, he says: His brothers and sisters born in lawful wedlock, and who survived him, are Reuben Green, and Sally, now wife of Asa Smith.

To the ninth interrogatory, he says: He *neve* had any other brothers or sisters, than those I have mentioned.

To the tenth interrogatory, he says: I know nothing about the paper or its execution.

To the eleventh interrogatory, he says: I know nothing about the execution or delivery of the said paper by any one.

To the twelfth interrogatory, he says: Daniel Green and Wheeler C. Green were brothers.

To the last interrogatory, he says: I do not know as I know of anything else, that can be of any advantage to either or any of the parties to this suit.

JAMES GREEN.

Sworn to and subscribed before me, this 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

The said Aurelius Wheeler, being by me duly sworn, answered the said several interrogatories, as follows:

To the first interrogatory, he says: My name is Aurelius Wheeler; I am 59 years of age, and by occupation a farmer.

To the second interrogatory, he says: I do.

To the third interrogatory, he says: His mother is my cousin.

To the fourth interrogatory, he says: I did.

To the fifth interrogatory, he says: His mother is my cousin.

To the sixth interrogatory, he says: He was a batchelor.

To the seventh interrogatory, he says: Not any, to my knowledge.

To the *eight* interrogatory, he says: Daniel Green, Reuben Green, and Sally Smith, wife of Asa Smith, were his brothers and sister, who survived him, born in lawful wedlock.

To the ninth interrogatory, he says: He never had any other brothers or sisters to my knowledge.

To the tenth interrogatory, he says: I know the paper marked A, dated 5th August, 1837, now shown to me; I knew there was such a paper executed in 1837, and believe this to be the same; I know it was executed by Reuben Green, Asa Smith, and Sally Smith, his wife; I signed my name to it as a subscribing witness to its execution; my name subscribed thereto, as a witness, is in

my hand-writing; I know the hand-writing of P. G. Clark and Joseph L. Richardson; they also subscribed the said paper as witnesses to its execution, and their names to the said paper are in their respective *hands-writing.*

To the eleventh interrogatory, he says: I know that Reuben Green, Asa Smith, and Sally, his wife, executed the said paper, as stated in my answer to the tenth interrogatory, and that they all acknowledged the execution of it, and it was then delivered to Daniel Green; Reuben Green was a brother, and Sally Smith a sister, of Wheeler C. Green, and Asa Smith, the husband of Sally Smith, was a brother-in-law of Wheeler C. Green.

To the twelfth interrogatory, he says: Daniel Green and Wheeler C. Green were brothers.

To the last interrogatory, he says: I know of no other matter or thing that can benefit either of the parties in this cause.

AURELIUS WHEELER.

Sworn to and subscribed before me, this 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

CITY OF NEW YORK.
County of Cayuga, ss.

I hereby certify that the preceding depositions and examinations of Aurelius Wheeler, Asa Smith, and Sally Smith, and James Green, were taken and reduced to writing by me, on oath first duly administered to them respectively, and which depositions were subscribed by the deponents respectively, in my presence, and the commission and interrogatories hereto annexed.

Dated August 14th, 1851.

P. G. CLARK,
Commissioner.

Transcript of probate court of Claiborne county.

The State of Mississippi:

Be it remembered, that at a regular term of the probate court in and for the county of Claiborne, and State aforesaid, begun and held at the court-house of said county, on the twenty-seventh day of May, A. D. 1849, among other orders and decrees then and there made by said court, was the following, to wit:

Insolvency of the estate of Amos Whiting, dec'd.

LAKE HOPKINS et al.
vs.
PUTNAM & ELLETT.

After reading and filing the certificate of the judgment of the

high court of errors and appeals, reversing the decree of the probate court of Claiborne county, heretofore made in the matter of the insolvency of the estate of Amos Whiting in this cause, it is ordered by this court that said matter be referred to the clerk of this court, and that publication be made by advertisement in the Port Gibson Herald and Correspondent, a public newspaper printed and published in said county, for the space of six months, requiring the creditors of said estate to file their accounts and claims against the same, probated according to law, with the clerk of said court, on or before Monday, the 17th day of December next, or said claims will be barred; and that a like notice be posted at the door of the court-house of said county.

At the December term of said court, the following order was made in the matter of the insolvency of the est. of Amos Whiting, dec'd:

Est. of Amos Whiting, dec'd.

On reading and filing the report of F. J. Poor, the clerk of this court, acting as commissioner of insolvency on the estate of Amos Whiting, dec'd, it is ordered that publication of citation be made in the Port Gibson Herald and Correspondent, for the space of four successive weeks, warning all creditors and other persons interested in said estate, to be and appear at the next February term of this court, to show cause, if any they can, why said report should not be allowed.

At the January term, 1850, of said court, the following orders were made, to wit, in the matter of the report of the commissioner of insolvency on the estate of Amos Whiting, deceased:

Estate of Amos Whiting, deceased.

F. J. Poor, clerk of this court, to whom it was referred to receive, audit, and report on the claims against the insolvent estate of Amos Whiting, deceased, having reported to this court, at the December term, 1849, thereof, a list of all the claims presented to him against the said estate, and further proceedings thereon having been duly continued until the present, and it now being shown to the court that notice has been duly published in the Port Gibson Herald and Correspondent for four successive weeks, in pursuance of an order of this court, made at the said December term, warning all creditors and other persons interested to appear at this term, and make their exceptions, if any they have, to the confirmation of said report; and Henry T. Ellett, a creditor of said estate, having appeared and presented exceptions to the allowance of the claim of George Lake, reported by the said com-

my hand-writing; I know the hand-writing of P. G. Clark and Joseph L. Richardson; they also subscribed the said paper as witnesses to its execution, and their names to the said paper are in their respective *hands-writing.*

To the eleventh interrogatory, he says: I know that Reuben Green, Asa Smith, and Sally, his wife, executed the said paper, as stated in my answer to the tenth interrogatory, and that they all acknowledged the execution of it, and it was then delivered to Daniel Green; Reuben Green was a brother, and Sally Smith a sister, of Wheeler C. Green, and Asa Smith, the husband of Sally Smith, was a brother-in-law of Wheeler C. Green.

To the twelfth interrogatory, he says: Daniel Green and Wheeler C. Green were brothers.

To the last interrogatory, he says: I know of no other matter or thing that can benefit either of the parties in this cause.

AURELIUS WHEELER.

Sworn to and subscribed before me, this 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

CITY OF NEW YORK,
County of Cayuga, ss.

I hereby certify that the preceding depositions and examinations of Aurelius Wheeler, Asa Smith, and Sally Smith, and James Green, were taken and reduced to writing by me, on oath first duly administered to them respectively, and which depositions were subscribed by the deponents respectively, in my presence, and the commission and interrogatories hereto annexed.

Dated August 14th, 1851.

P. G. CLARK,
Commissioner.

Transcript of probate court of Claiborne county.

The State of Mississippi:

Be it remembered, that at a regular term of the probate court in and for the county of Claiborne, and State aforesaid, begun and held at the court-house of said county, on the twenty-seventh day of May, A. D. 1849, among other orders and decrees then and there made by said court, was the following, to wit:

Insolvency of the estate of Amos Whiting, dec'd.

LAKE HOPKINS et al.
vs.
PUTNAM & ELLETT.

After reading and filing the certificate of the judgment of the

high court of errors and appeals, reversing the decree of the probate court of Claiborne county, heretofore made in the matter of the insolvency of the estate of Amos Whiting in this cause, it is ordered by this court that said matter be referred to the clerk of this court, and that publication be made by advertisement in the Port Gibson Herald and Correspondent, a public newspaper printed and published in said county, for the space of six months, requiring the creditors of said estate to file their accounts and claims against the same, probated according to law, with the clerk of said court, on or before Monday, the 17th day of December next, or said claims will be barred; and that a like notice be posted at the door of the court-house of said county.

At the December term of said court, the following order was made in the matter of the insolvency of the est. of Amos Whiting, dec'd:

Est. of Amos Whiting, dec'd.

On reading and filing the report of F. J. Poor, the clerk of this court, acting as commissioner of insolvency on the estate of Amos Whiting, dec'd, it is ordered that publication of citation be made in the Port Gibson Herald and Correspondent, for the space of four successive weeks, warning all creditors and other persons interested in said estate, to be and appear at the next February term of this court, to show cause, if any they can, why said report should not be allowed.

At the January term, 1850, of said court, the following orders were made, to wit, in the matter of the report of the commissioner of insolvency on the estate of Amos Whiting, deceased:

Estate of Amos Whiting, deceased.

F. J. Poor, clerk of this court, to whom it was referred to receive, audit, and report on the claims against the insolvent estate of Amos Whiting, deceased, having reported to this court, at the December term, 1849, thereof, a list of all the claims presented to him against the said estate, and further proceedings thereon having been duly continued until the present, and it now being shown to the court that notice has been duly published in the Port Gibson Herald and Correspondent for four successive weeks, in pursuance of an order of this court, made at the said December term, warning all creditors and other persons interested to appear at this term, and make their exceptions, if any they have, to the confirmation of said report; and Henry T. Ellett, a creditor of said estate, having appeared and presented exceptions to the allowance of the claim of George Lake, reported by the said com-

my hand-writing; I know the hand-writing of P. G. Clark and Joseph L. Richardson; they also subscribed the said paper as witnesses to its execution, and their names to the said paper are in their respective *hands-writing.*

To the eleventh interrogatory, he says: I know that Reuben Green, Asa Smith, and Sally, his wife, executed the said paper, as stated in my answer to the tenth interrogatory, and that they all acknowledged the execution of it, and it was then delivered to Daniel Green; Reuben Green was a brother, and Sally Smith a sister, of Wheeler C. Green, and Asa Smith, the husband of Sally Smith, was a brother-in-law of Wheeler C. Green.

To the twelfth interrogatory, he says: Daniel Green and Wheeler C. Green were brothers.

To the last interrogatory, he says: I know of no other matter or thing that can benefit either of the parties in this cause.

AURELIUS WHEELER.

Sworn to and subscribed before me, this 14th day of August, 1851.

PARIS G. CLARK,
Commissioner.

CITY OF NEW YORK.
County of Cayuga, ss.

I hereby certify that the preceding depositions and examinations of Aurelius Wheeler, Asa Smith, and Sally Smith, and James Green, were taken and reduced to writing by me, on oath first duly administered to them respectively, and which depositions were subscribed by the deponents respectively, in my presence, and the commission and interrogatories hereto annexed.

Dated August 14th, 1851.

P. G. CLARK,
Commissioner.

Transcript of probate court of Claiborne county.

The State of Mississippi:

Be it remembered, that at a regular term of the probate court in and for the county of Claiborne, and State aforesaid, begun and held at the court-house of said county, on the twenty-seventh day of May, A. D. 1849, among other orders and decrees then and there made by said court, was the following, to wit:

Insolvency of the estate of Amos Whiting, dec'd.

LAKE HOPKINS et al.
vs.
PUTNAM & ELLETT.

After reading and filing the certificate of the judgment of the

high court of errors and appeals, reversing the decree of the probate court of Claiborne county, heretofore made in the matter of the insolvency of the estate of Amos Whiting in this cause, it is ordered by this court that said matter be referred to the clerk of this court, and that publication be made by advertisement in the Port Gibson Herald and Correspondent, a public newspaper printed and published in said county, for the space of six months, requiring the creditors of said estate to file their accounts and claims against the same, probated according to law, with the clerk of said court, on or before Monday, the 17th day of December next, or said claims will be barred; and that a like notice be posted at the door of the court-house of said county.

At the December term of said court, the following order was made in the matter of the insolvency of the est. of Amos Whiting, dec'd:

Est. of Amos Whiting, dec'd.

On reading and filing the report of F. J. Poor, the clerk of this court, acting as commissioner of insolvency on the estate of Amos Whiting, dec'd, it is ordered that publication of citation be made in the Port Gibson Herald and Correspondent, for the space of four successive weeks, warning all creditors and other persons interested in said estate, to be and appear at the next February term of this court, to show cause, if any they can, why said report should not be allowed.

At the January term, 1850, of said court, the following orders were made, to wit, in the matter of the report of the commissioner of insolvency on the estate of Amos Whiting, deceased:

Estate of Amos Whiting, deceased.

F. J. Poor, clerk of this court, to whom it was referred to receive, audit, and report on the claims against the insolvent estate of Amos Whiting, deceased, having reported to this court, at the December term, 1849, thereof, a list of all the claims presented to him against the said estate, and further proceedings thereon having been duly continued until the present, and it now being shown to the court that notice has been duly published in the Port Gibson Herald and Correspondent for four successive weeks, in pursuance of an order of this court, made at the said December term, warning all creditors and other persons interested to appear at this term, and make their exceptions, if any they have, to the confirmation of said report; and Henry T. Ellett, a creditor of said estate, having appeared and presented exceptions to the allowance of the claim of George Lake, reported by the said com-

missioner, it is ordered that the same be filed, and the hearing of said exceptions be continued to the next regular term of this court; and no further exceptions being made to said report, and the court being satisfied that the same is correct, (except that of the said George Lake,) and that the claims are justly due, it is further ordered that the said report of the said commissioner, except in regard to the claim of the said George Lake, ; and it is further ordered by the court, that the said F. J. Poor be allowed the sum of fifteen dollars for his services as commissioner.

Exhibit A.

Publication.—Insolvent notice.

STATE OF MISSISSIPPI,
Claiborne county, ss.

To all persons interested in the estate of Amos Whiting, deceased:

Upon reading and filing the certificate of the judgment of the high court of errors and appeals, reversing the decree of the probate court of Claiborne county, heretofore made in the matter of the insolvency of the estate of Amos Whiting, it was ordered by said probate court, at the May term, A. D. 1849, that said matter be referred to the clerk of said court, and that publication by advertisement be made in the Port Gibson Herald and Correspondent, a public newspaper printed and published in said county for the space of six months, requiring the creditors of said estate to file their claims against the same, probated according to law, with the clerk of said court, on or before Monday, the 17th day of December next, or said claims will be barred; and that a like notice be posted at the court-house door of said county.

Witness Hon. William M. Randolph, judge of the probate court of Claiborne county, at the court-house thereof, the fourth Monday of May, A. D. 1849.

[L. S.]

FRED'K J. POOR, *Clk.*

June 15, 1849.

STATE OF MISSISSIPPI,
Claiborne county, ss.

Personally appeared before me, a justice of the peace in and for said county, William F. Eisely, publisher of the Port Gibson Herald and Correspondent, a public newspaper printed and published in the town of Port Gibson, county and State aforesaid, and made oath that the annexed advertisement was duly published in said Port Gibson Herald and Correspondent, six months from the 15th day of June, 1849, to the 14th day of December, 1849, both days inclusive, to wit: in Nos. 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, and

52 of vol. 7, and in Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of vol. 8, all bearing their respective dates, making in all 27 times.

WM. F. EISELY.

Sworn to and subscribed before me, this 17th day of December, A. D. 1849.

W. H. JACOBS, *J. P.*

STATE OF MISSISSIPPI,
Claiborne county, ss.

I do hereby certify that I have examined the file of the Port Gibson Herald and Correspondent, and find the above statement of the publisher to be correct.

Given under my hand Decr. 17th, 1849.

W. H. JACOBS, *J. P.*

Report of Commissioner.

To the Hon. Wm. M. Randolph, judge of the probate court of Claiborne county, State of Mississippi.

The undersigned, clerk of this honorable court, and commissioner appointed at term, 1849, thereof to receive and examine claims against the estate of Amos Whiting, dec'd, beg leave respectfully to report, that in pursuance of said order and the statute, he *causes* publication of a notice to be made in the Port Gibson Herald and Correspondent, for the space of six months, and posted a similar notice at the court-house door of said county, which will appear by reference to exhibit A, herewith filed, and made a part of this report, requiring the creditors and all others interested in said estate to file their claims against the same probater according to law, with the undersigned, on or before the 17th day of December, 1849, or they would be forever barred.

The undersigned herewith submits, as a part of this report, a list of all the claims which have been laid before him, with the sums which he has allowed on each respective claim, including interest to the 17th day of December, A. D. 1849, marked exhibit B.

And your commissioner having now discharged the duties incumbent on him, and fully reported in this behalf, prays to be discharged, with such compensation as is authorized by law.

Respectfully submitted.

FRED'K J. POOR,
Clk. and Commissioner.

Sworn to and subscribed before me, 27 Dec., 1849.

N. McDOUGALL, *J. P.*

Exhibit B.

A list of all the claims which have been laid before the undersigned commissioner to receive and examine claims against the estate of Amos Whiting, deceased, with the sums allowed on each respective claim, and interest thereon up to the 17th day of December, A. D. 1849.

No.	Name of claimant.	Nature of claim.	Am't allowed.	Interest.	Total.
1	George Lake	Open account, (bal.)	$35,912 12	17,596 87	52,708 99
2	A. W. Putnam, extr. &c.	Abs. of judt. clb. ct. cort.	505 37	305 80	811 17
3	Est. of Ro. Hamilton, de'd.	Certificate clk. probate.	2,000 00	1,360 00	3,360 00
4	J. P. Parker, admr. &c.	Abst. judgt. clb. ct. court.	1,332 02	1,002 73	2,334 75
5	Femdy & Bennett, survs., &c.	Do do	469 57	338 40	807 97
6	Est. of A. H. Horner	Do do	"	"	"
"	" "	In favour of J. P. Parker, admr., assigned to administration of A. H. Homers est.	1,314 65	1,002 73	2,317 38
7	H. T. Ellett, assignee of J. M. Rhodes.	Cert'd copy of probate court.	5,976 59	3,845 20	9,821 79
8	H. T. Ellett.....	Open account, (bal.)	243 40	108 68	352 08
9	Ellett & Payson.....	Do do	100 00	71 35	171 35
10	H. D. Mandiville et al., trustee.	Bal. due on judgt. Planters' Bank.	2,955 51	2,128 32	5,083 83
11	Charles M. Campbell	Abt. of judg. circuit ct. U. S.	1,175 82	564 32	1,740 14
					$79,609 43

FRED'K J. POOR,
Clk. and Commr.

Sworn to and subscribed before me, 27th Dec., 1849.
N. McDOUGALL, *J. P.*

Exceptions.

To rept., by H. T. Ellett, Esq.

Probate court of said county, January term, 1850, in the matter of the report of the commissioner of insolvency on the estate of Amos Whiting, deceased.

STATE OF MISSISSIPPI,
Claiborne county, ss.

Henry T. Ellett, who is a creditor of the said estate of Amos Whiting, excepts to the confirmation and allowance of the said

report, and to the allowance of the claim stated in the said report, as claim No. 1, due to George Lake on open account; (bal.,) amount allowed, $38,912.12, with $17,596.87 for interest, making a total of $52,708.99, for the following reasons, to wit:

1st. That no part of said claim, principal or interest, is due from the estate of Amos Whiting to the said George Lake.

2d. Because the amounts charged in said account as having been paid by the said George Lake, for the said estate of said Whiting, were *now*, in fact, advanced or paid by the said George Lake, for the said estate; or if *the* were advanced it was done by the said George Lake voluntarily and without compulsion, on request of said Whiting or his representatives.

3d. Because the said George Lake received large sums of money, and a large amount of valuable property belonging to said estate, for which he has given no credit.

4th. Because each and every item of the said claim has long been and is barred by the statute of limitations.

5th. Because the said claim *in* in fact an administration account of the said George Lake, as administrator of said Amos Whiting, and has never been presented to or settled by the probate court; and this exceptant insists *insists* that the said administration account cannot be settled in this mode before a commissioner of insolvency, but must be duly settled and allowed by the court according to law, and the balance due, if any, laid before the commissioner of insolvency.

6th. Because long since the last item of said account accrued, the said George Lake was duly declared a bankrupt, by the district court of the U. S., for the southern district of Mississippi, on his own petition, and was duly discharged as such, whereby his claim against the estate of said Whiting, if he had any, became transferred to his assignee in bankruptcy.

7th. Because the particular items of the said account are not legal charges against the estate of said Amos Whiting; a large part thereof are shown not to be paid, and the charges of commissions and interest are wholly illegal, and have never been allowed to said Lake in any proper form.

Wherefore this exceptant prays that the said claim of said George Lake may be disallowed and rejected, and struck out of said report.

H. T. ELLETT,
Exceptant.

Filed the 30th January, 1850.

FRED'K J. POOR, *Clk.*

At the April term of said court, A. D. 1851, the following order was made, to wit:

Order.

Est. of Amos Whiting, deceased, in the matter of the report of Fred'k J. Poor, late clerk and commissioner of insolvency, and the exceptions of H. T. Ellett thereto.

Now, at this term of the court, come the parties and the said H. T. Ellett, on motion and leave withdraws his exceptions, and by consent and agreement of the parties interested, it is ordered, adjudged, and decreed that the claim of George Lake be confirmed and allowed, as reported by said commissioner, and that said report be recorded.

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, James A. Gage, clerk of the probate court in and for said county, do hereby certify that the foregoing nine pages and a part of this contain a true and perfect copy of the matters herein contained, as the same now appear on record and file in my office.

Given under my hand and seal of office, at Port Gibson, this 20th day of October, A. D. 1851.

JAS. A. GAGE,
Clerk of Probate.

And afterwards, to wit, at May rules, A. D. 1855, to wit, on the first Monday of May, A. D. 1855, this cause set for hearing by defendants on bill—bill of revivor, answers, exhibits, and proof.

And afterwards, to wit, on the 19th day of May, A. D. 1855, the following order was entered in said cause in the words and figures following, to wit:

In chancery, on final hearing, argued and submitted.

DANIEL GREEN
vs.
F. CREIGHTON et al.

And afterwards, to wit, on the 26th day of January, A. D. 1856, the following agreement of solicitors was entered in said cause:

Agreement of solicitors.

DANIEL GREEN'S adm'r
vs.
GEORGE LAKE et al. } 166.

DANIEL GREEN'S adm'r
vs.
FLETCHER CREIGHTON et al. } 165.

Whereas decrees of dismissal have been signed in the above

entitled causes, and the complainant intends to prosecute appeals in both cases, now it is hereby agreed that in the event, to wit, that complainant prosecutes and appeal in either case with success, and obtains an order of reversal, the same shall be taken and regarded by this court, and the parties thereto, as a reversal in both cases; and this court may proceed in each case as if both had been reversed upon appeal or writ of error; and it is further agreed that *that* in prosecuting said appeal or writs of error, it shall not be necessary to include in the record the vouchers accompanying the answers of defendants, nor any other papers immaterial to the question of jurisdiction by this court over the subject matter of complainant's bills; and that this agreement be a part of said records.

WHARTON *for Def'ts.*
FREEMAN *for Compl'ts.*

Final decree.

On the chancery side of this circuit court.

The United States of America, southern district of Mississippi.

DANIEL GREEN'S adm'r
vs.
FLETCHER CREIGHTON & JONATHAN McCALEB. } 165.

This cause having come on to be heard at the May term, 1855, of said court, and the same having been argued and submitted, on the 19th day of May, 1855, on final hearing on bill, bill of revivor, answers to original bill and bill of revivor, exhibits and proofs, and the same having been taken under advisement by his honor, S. J. Gholson, the judge presiding on said final hearing, and the court being now sufficiently advised in the premises, doth see fit to order, adjudge, and decree, and it is accordingly so ordered, adjudged, and decreed that said bill and bill of revivor be, and the same is hereby dismissed, and that the complainant pay the costs to be taxed, ordered, adjudged, and decreed, on this, the 26th day of January, 1856.

S. J. GHOLSON.

Appeal.

From which decision the complainants pray an appeal to the Supreme Court of the United States, which is granted upon the said complainant entering into bond, with John D. Freeman as security, in the penalty of five hundred dollars, conditioned according to law.

Appeal bond.

United States of America, southern district of Mississippi, set.

Know all men by these presents, that we, Evelina L. Green, administratrix of Daniel Green, deceased, and John D. Freeman, are held and firmly bound unto Fletcher Creighton, individually, and as executor of the last will and testament of Jonathan McCaleb, deceased, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Fletcher Creighton, as executor, &c., as aforesaid, and to the said Fletcher Creighton, individually, his lawful attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 26th day of January, A. D. 1856.

The condition of this obligation is such, that whereas, at the November term, A. D. 1855, of the circuit court of the United States for the southern district of Mississippi, which term of said court was adjourned by the order of the honorable Samuel J. Gholson, one of the judges of said court, from the first Monday of November, A. D. 1855, until the 3d Monday of January, 1856, held at the city of Jackson, in said district, a final decree was rendered by said court, sitting in chancery, in favor of the said Fletcher Creighton individually, and as executor of said Jonathan McCaleb, deceased, against the said Evelina L. Green, administratrix of said Daniel Green, deceased, dismissing the bill of complaint filed by said Daniel Green in his lifetime against the said Fletcher Creighton et al., with costs of suit; and whereas the said Evelina Green, administratrix, &c., as aforesaid, has prayed for and obtained an appeal therefrom to the Supreme Court of the United States, which appeal is granted upon her executing this bond with the above named John D. Freeman, as surety herein:

Now, if the said Evelina L. Green, administratrix, &c., as aforesaid, shall prosecute her said appeal to effect, and shall well and truly pay and satisfy the amount of said decree, and all such costs as the Supreme Court of the United States shall adjudge in the premises, if she, the said Evelina L. Green, administratrix, &c., as aforesaid, shall fail to make her plea good, then and in that case this obligation to be void, otherwise to *to* remain in full force and virtue.

EVELINA L. GREEN. [SEAL.]
JOHN D. FREEMAN. [SEAL.]

Witness to signature of Jno. D. Freeman:
W. H. BROWN.

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Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing ninety-seven pages contain a full, true, and complete transcript of the record of the decree between the parties therein named, (except so much omitted as per agreement filed therein,) together with a full, true, and correct copy of the appeal bond filed therein, as the same now remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 15th day of No-
[L. S.] vember, A. D. 1856, and of the independence of the United States the 81st.

W. H. BROWN, *Clk.*

Circuit court U. States.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

I, Samuel J. Gholson, presiding judge of said circuit court, do hereby certify that William H. Brown, whose name is subscribed to the foregoing certificate, is, and was at the time of signing the same, clerk of said circuit court, and that his attestation is in due form of law.

Given under my hand and seal, this 15th day of November, A. D. 1856.

S. J. GHOLSON. [L. S.]